
Appeal Decisions

By David Fitzsimon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2019

- Each 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).
 - Each appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Southwark.
 - The development proposed in each case is the 'installation of public call box'.
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Appeal A Ref: APP/A5840/W/19/3228167

Public Highway at 72 Grove Vale, East Dulwich, London SE22 8DT

- The application Ref 18/AP/3149, dated 1 October 2018, was refused by notice dated 8 November 2018.
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Appeal B Ref: APP/A5840/W/19/3228171

Public Highway at 41 Grove Vale, London SE22 8EQ

- The application Ref 18/AP/3157, dated 1 October 2018, was refused by notice dated 8 November 2018.
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Appeal C Ref: APP/A5840/W/19/3228179

Public Highway at Dulwich Wood Park Corner Dulwich Wood Avenue, London SE19 1HX

- The application Ref 18/AP/3187, dated 1 October 2018, was refused by notice dated 8 November 2018.
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Appeal D Ref: APP/A5840/W/19/3228257

Public Highway at 8 Grove Vale, London SE22 8EF

- The application Ref 18/AP/3179, dated 1 October 2018, was refused by notice dated 12 November 2018.
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Appeal E Ref: APP/A5840/W/19/3230900

Public Highway at Newington Butts adj, Draper House, London SE1 6SX

- The application Ref 18/AP/3524, dated 31 October 2018, was refused by notice dated 14 December 2018.
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Appeal F Ref: APP/A5840/W/19/3230967

Public Highway at 109-115 Blackfriars Road, London SE1 8HW

- The application Ref 18/AP/3571, dated 31 October 2018, was refused by notice dated 14 December 2018.
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Appeal G Ref: APP/A5840/W/19/3230968

Public Highway at 12 Sumner Street, London SE1 9JZ

- The application Ref 18/AP/3564, dated 31 October 2018, was refused by notice dated 14 December 2018.
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Appeal H Ref: APP/A5840/W/19/3231008

Public Highway at 26 New Kent Road, London SE1 6TJ

- The application Ref 18/AP/3535, dated 31 October 2018, was refused by notice dated 14 December 2018.

Appeal I Ref: APP/A5840/W/19/3231013

Public Highway at 157-168 Blackfriars Road, London SE1 8EZ

The application Ref 18/AP/3570, dated 31 October 2018, was refused by notice dated 14 December 2018.

Appeal J Ref: APP/A5840/W/19/3213015

Public Highway at Newington Butts in front of Elephant & Castle Shopping Centre, London SE1 6TE

- The application Ref 18/AP/3521, dated 31 October 2018, was refused by notice dated 14 December 2018.

Decisions

1. Each appeal is dismissed.

Procedural Matters and Background

2. Each appeal proposal relates to the installation of a public call box of a 'Max 2' type, as described by the appellant company, which is an electronic communication apparatus comprising a public telephone, Wi-Fi and other technology related to mobile telecommunications.
3. As a licensed electronic communications code operator, the appellant company benefits from deemed planning permission for the proposed public call boxes erected as communications apparatus that fall within the permitted development rights of Schedule 2, Part 16, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the prior approval requirements under paragraph A.3. The appellant company applied to the Council on that basis. The Council determined that prior approval was required for the siting and appearance of the communication apparatus.
4. 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 of the GPDO 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. This is the case in respect of these appeals.
5. Class A of Part 16, Schedule 2 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'. The judgement in Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd [2019] EWHC 176 (Admin) (the Westminster judgement) considered 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 the GPDO.

6. The Council reached their decisions on the appeal applications prior to the passing down of the Westminster judgement and as a result, the reasons do not refer directly to it. Instead, they were refused by the Council on grounds mainly relating to siting and appearance. However, the Westminster judgement confirmed that the assessment as to whether a telecommunications apparatus comes within the scope of Part 16, Class A of the GPDO has to be made before siting and appearance are considered.

Main Issue

7. Following the Court's judgment in *Westminster*, the main issue is whether the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

8. The appellant company has provided Counsel's opinion on the relevance of the Westminster judgment to the appeal proposals. The opinion states that '*in the absence of advertising forming part of the application, those glazed parts of the call boxes cannot lead to any conclusion of there being a dual purpose for advertising*'. It concludes that '*the New World case is based on materially different facts from the Maximus cases, such that it is of no application to the appeals currently under consideration by the Planning Inspectorate*'.
9. However, the Westminster 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 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.*'
10. It is evident from the drawing 'MAX 2 ASSEMBLY Rev C', which accompanied each of the appeal applications, that the 'front view' of the proposed public call boxes is designed to house an integrated '*visual area*' measuring 1100mm by 1700mm. From this evidence, it seems to me that the 'front view' of the proposed installations is specifically designed for display purposes. This assessment is irrespective of whether such display panels might also be used to access the internal equipment within the structures for maintenance purposes.

Conclusion

11. In light of the above, I conclude that in each case, the proposed installation is not solely for the purpose of the operator's electronic communications network and therefore each falls outside Schedule 2, Part 16, Class A of the GPDO. All of the appeals are dismissed on this basis and it not necessary to consider the matters relating to siting or appearance.

David Fitzsimon

INSPECTOR