



Appeal Decisions

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st December 2019

Appeal A:

Appeal Ref: APP/A5840/W/19/3230903

Public Highway, Adjacent to 20 Great Dover Street, London SE1 4LX

Grid Ref Easting: 532542, Grid Ref Northing: 179552

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3567, 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:

Appeal Ref: APP/A5840/W/19/3231018

Public Highway, Old Kent Road corner Massinger Street, London SE1 4NX

Grid Ref Easting: 533191, Grid Ref Northing: 178730

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3520, 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:

Appeal Ref: APP/A5840/W/19/3230886

Public Highway, Bricklayer's Arms Roundabout Junction Great Dover Street, London SE1 4TD

Grid Ref Easting: 532984, Grid Ref Northing: 179075

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3561, 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:

Appeal Ref: APP/A5840/W/19/3231019

Public Highway, Great Dover Street Adjacent Pallant House, London SE1 4YD

Grid Ref Easting: 532852, Grid Ref Northing: 179170

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3559, 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 E:

Appeal Ref: APP/A5840/W/19/3228275

Public Highway, Old Kent Road, Adjacent George Elliston House, London SE1 5ET

Grid Ref Easting: 534093, Grid Ref Northing: 178058

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3192, dated 1 October 2018, was refused by notice dated 12 November 2018.
 - The development proposed is a public call box.
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Appeal F:

Appeal Ref: APP/A5840/W/19/3230975

Public Highway, 187 Old Kent Road, London SE1 5NA

Grid Ref Easting: 533305, Grid Ref Northing: 178636

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3569, 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 G:

Appeal Ref: APP/A5840/W/19/3230974

Public Highway, 188 Old Kent Road, London SE1 5TY

Grid Ref Easting: 533329, Grid Ref Northing: 178582

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3527, 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 H:

Appeal Ref: APP/A5840/W/19/3228270

Public Highway, 430-432 Old Kent Road, London SE1 5YB

Grid Ref Easting: 533980, Grid Ref Northing: 178101

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3190, dated 1 October 2018, was refused by notice dated 12 November 2018.
 - The development proposed is a public call box.
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Appeal I:

Appeal Ref: APP/A5840/W/19/3230917

Public Highway, 99-101 Newington Causeway, London SE1 6BN

Grid Ref Easting: 532029, Grid Ref Northing: 179253

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3572, 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 J:

Appeal Ref: APP/A5840/W/19/3230912

Public Highway, 70 Newington Causeway, London SE1 6DF

Grid Ref Easting: 532039, Grid Ref Northing: 179306

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3576, 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 K:

Appeal Ref: APP/A5840/W/19/3230906

Public Highway, 56-62 Newington Causeway, London SE1 6DS

Grid Ref Easting: 532082, Grid Ref Northing: 179373

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3532, 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 L:

Appeal Ref: APP/A5840/W/19/3230994

Public Highway, Adjacent 8 Walworth Road, London SE1 6EE

Grid Ref Easting: 532028, Grid Ref Northing: 178840

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3529, 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 M:

Appeal Ref: APP/A5840/W/19/3230927

Public Highway, 63-67 Newington Causeway, London SE1 6LS

Grid Ref Easting: 532110, Grid Ref Northing: 179388

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3531, 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 N:

Appeal Ref: APP/A5840/W/19/3230915

Public Highway, 81 New Kent Road, London SE1 6RB

Grid Ref Easting: 532248, Grid Ref Northing: 179009

- 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 against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/3573, dated 31 October 2018, was refused by notice dated 14 December 2018.
 - The development proposed is a public call box.
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Decision

1. The appeals are dismissed.

Procedural Matters

2. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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 fourteen appeals before me.
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.

4. The appeals relate to proposals by the appellant, Maximus Networks Ltd, for the installation of electronic communications apparatus pursuant to Schedule 2, Part 16, Class A of the GPDO at fourteen sites within the London Borough of Southwark. In all cases, the electronic communications apparatus is described by the appellant as a 'public call box' and the apparatus is identical in each case. Therefore, in the interests of succinctness, I have dealt with all of the appeals in the same decision.
5. The proposals before me were refused by the Council on grounds relating to siting and appearance. However, the *Westminster* judgement¹ found that "... the judgement as to whether the kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered..." (paragraph 46).
6. In light of the above, in respect of Appeals A-F, the appellant and Council have been given the opportunity to comment on the bearing of the judgement upon the appeals. In respect of Appeals G-N, the appellant and Council have provided comments on the bearing of the judgement upon the appeals as part of their initial respective submissions, and, thus, additional comments were not sought. I have taken these comments into account as part of my decision.

Main Issue

7. 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

8. 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...". 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).
9. In light of the above, the *Westminster* judgment went on to find that "A development therefore falls outside the scope of Class A Part 16 of the GPDO 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).

¹ *Westminster CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin) (5 February 2019)

10. The appellant has provided Counsel's opinion on the relevance of the *Westminster* judgement which states that "none of the Maximus appeal cases include any advertising features. All the design elements of the public call boxes proposed by Maximus form part of the telecommunications function". Consequently, the Counsel's opinion concludes that "the High Court decision in 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".
11. Included within the Counsel's Opinion is an annex that is titled 'Description of the Design of the 'Max 2' Call boxes'. The annexe is used to inform the Counsel's opinion, and, it refers to the glazed back panel on the rear of the call box as follows, "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".
12. The appellant states that the rear access panel is an essential requirement of the call box and that behind the glazed panel, there would be a housing area for servicing, maintenance, or updating and replacing of equipment. They go on to state that the toughened glass door prevents direct access to this service panel, and that, the rear panel is made from toughened glass to prevent accidental or deliberate damage or forced entry to the equipment inside.
13. Whilst I acknowledge that the electronic communications apparatus will require regular servicing, maintenance and replacing/updating, I note that the proposed elevations (Drawing No: MAX 2 ASSEMBLY Rev:C) state that the rear of the call box would include a 'non-illuminated display panel' which would measure 1100mm wide and 1700mm high. The measured annotations on the proposed elevations, which specifically relate to the rear of the structure, state that the 'non-illuminated display panel' would be a 'visual area'. In addition, the illustrative 3D image of the proposed call box (Drawing No: 06-3D), which corresponds with the proposed elevations drawing, shows an advertisement within the 'non-illuminated display panel' to the rear of the call box.
14. Given the above, based on the evidence before me, I consider that the rear of the call box has been intentionally designed to incorporate an area for the display of advertisements, and, thus, the call boxes have an intended dual purpose. Accordingly, the appeal proposals are 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 (as amended).
15. The appellant has drawn my attention to a number of appeal decisions which I have carefully considered. However, given my conclusion above, those decision letters which relate to siting and appearance are not relevant to my consideration of the appeals before me. In addition, I have had regard to the judgements which have been put forward by the appellant. However, none of the judgements would lead me to any other conclusion than that set out above.

Conclusion

16. For the reasons given above and having regard to all matters raised, including in representations, I conclude that the appeals should be dismissed.

Christopher Miell

INSPECTOR