



Appeal Decisions

Site visits made on 11 November 2019 by Thomas Courtney BA(Hons) MA

Decisions by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 06 January 2020

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decisions of the London Borough of Islington.
 - The development proposed in each case is a public call box.
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Appeal A - Ref: APP/V5570/W/19/3231253 **200 Essex Road, London N1 3AP**

- The application Ref P2018/3666/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
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Appeal B - Ref: APP/V5570/W/19/3231170 **200 Pentonville Road, London N1 9JP**

- The application Ref P2018/3681/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
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Appeal C - Ref: APP/V5570/W/19/3231241 **44-46 Upper Street, London N1 0PN**

- The application Ref P2018/3684/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
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Appeal D - Ref: APP/ V5570/W/19/3231243 **4 Upper Street, London N1 0PQ**

- The application Ref P2018/3652/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
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Decisions

1. All 4 appeals are dismissed.

Appeal Procedure

2. The site visits were undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. Whilst each appeal relates to a different site, the proposed call boxes on the sites are identical. I have considered each proposal on its individual merits, but as they raise similar issues, the cases are dealt with in a single decision letter.
4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the General Permitted Development Order (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 four appeals before me.
5. As such, and as the appellant is an electronic communications code operator, the appellant is able to benefit from permitted development rights for a proposed call box under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO), subject to the conditions in part A.3 which requires the prior approval of the local planning authority in respect of the siting and appearance of the development.
6. The provisions of the Order require the local planning authority to assess the proposed development solely on these matters. As such, considerations such as the necessity for a telephone kiosk and whether it may be used for advertising in the future are not relevant to this appeal. Accordingly, the main issues are set out below.
7. The issue of the inclusion of advertising on public call boxes has been considered by the High Court. A recent judgement in the Westminster case (Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd (2019) EWHC 176 (Admin)) considered the matter of dual purpose of advertisement display and telecommunications use. 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 call box 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'.
8. In the case of the appeals before me, I have taken into account the submitted Opinion of Counsel regarding this matter and the design of the proposed public call box provided. The design of the proposed call boxes comprises a steel-framed kiosk, constructed with steel side casings, laminated and toughened glass, areas of black laminated solar panels, LED lighting strips on the outside

edges, and a solar roof panel canopy. The drawings show them to be 3.119m high, with a footprint of around 0.219m by 1.325m. They would comprise a two-sided structure, with one side incorporating a non-illuminated glass display panel providing maintenance access to the equipment, and the other side incorporating a public pay phone. It is apparent that the form and design of the proposed telecommunications apparatus is driven by its proposed functionality as a public call box. I have no evidence to suggest that the proposed development includes elements that are there for the purpose of advertising. Consequently, on the basis of the evidence provided in these appeals, I consider that the proposals are for the purpose of the operator's electronic communications network, are not dual purpose, and so are able to benefit from permitted development subject to the conditions in part A.3.

9. The principle of development is established by the GPDO 2015 and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require the development to be judged against the policies of development plan. Nonetheless, I have had some regard to the policies of the development plan, any related guidance and the National Planning Policy Framework only in so far as they relate to matters of siting and appearance.

Main Issues

10. The main issues are:

- the effect of the proposal's siting and appearance on the character and appearance of the surrounding area (all appeals); and
- the effect of the proposal's siting and appearance on pedestrian safety (appeals C and D only).

Reasons for the Recommendations

Appeal A: 200 Essex Road, London N1 3AP

11. The proposed telephone kiosk would be sited on an area of pavement in-between Essex Road and a slip road which links Rotherfield Street to New North Road (A1200). The surrounding area is characterised by a mix of post-war residential blocks and historical buildings. Some of these have pubs, restaurants or shops on the ground floor.
12. The proposed kiosk would be close to two existing phone kiosks, a nearby road sign, a bench, several bollards, an existing illuminated advertising panel, as well as several traffic lights at the nearby junction. I recognise that the style of the proposal would be functional and its height responds to the requirements of the telecommunications equipment within and the efficiency of the 4G/5G, small cell and WiFi technology. However, due to its imposing scale, being taller and broader than most other surrounding street furniture, and the odd appearance of the roof-mounted solar panels, it would appear dominant and incongruous in this setting. It would be a visually intrusive addition to the locality and, in combination with the existing street furniture, lead to a cluttered streetscene when seen from various positions along Essex Road and New North Road. The siting and appearance of the development would therefore harm the character and appearance of the area.

Appeal B: 200 Pentonville Road, London N1 9JP

13. The proposed structure would be sited on a stretch of pavement along the north side of Pentonville Road, adjacent to No. 200 which is a large tall modern mixed-use building. This stretch of pavement is relatively uncluttered and is located within a busy commercial district largely characterised by modern buildings. However, the site is close to the King's Cross Conservation Area (KCCA) to the west of the site and which includes some older buildings south west of the site. The contrast between the older buildings in the KCCA and the modern buildings outside it, contributes to the setting of the KCCA. Furthermore, the large mature trees give the street a pleasant rhythm.
14. Although the design of the proposal would be functional and responds to the requirements of the telecommunications equipment within, its imposing height and width in an area that is largely devoid of man-made street furniture, and the odd appearance of the solar panel canopy, would appear incongruous in this setting and would be a visually intrusive addition to the locality adding clutter to the area when seen from various positions on Pentonville Road. Moreover, the resultant cluttered effect would detract from the setting of the KCCA. Therefore the siting and appearance of the development would harm the character and appearance of the area including the setting of the KCCA.
15. The harm arising to the setting of the KCCA would be localised and less than substantial. There would be public benefits arising from the proposal in terms of providing access to a USB charging point and free public WiFi as well as accessibility to a telephone kiosk for people with limited mobility, including wheelchair users. However, in this case, these do not outweigh the harm to the heritage asset identified.

Appeal C: 44-46 Upper Street, London N1 0PN

16. The appeal site is located on the outer, roadside, edge of stretch of pavement on the western side of Upper Street. It lies outside of the Steam Passage Tavern Public House and in close proximity to the junction with Berners Road. It is a busy shopping district with heavy pedestrian footfall. The site also falls within The Angel Conservation Area (TACA) whose significance is provided by its prominence as the historic main thoroughfare through Islington. The stepped pavements are a specifically noted historic feature in the Conservation Area Design Guidelines (2002).
17. In the vicinity of the appeal site is a row of kerbside cycle stands, a row of kerbside trees, two existing phone kiosks, the Public House forecourt which is used for seating, two kerbside utility boxes, a large road sign, a lamppost, and a set of traffic lights.
18. I recognise that the style of the proposal would be functional and its height responds to the requirements of the telecommunications equipment. However, due to its imposing height and width, being larger than most other surrounding street furniture, and the odd appearance of the roof-mounted solar panels, it would appear as a dominant and incongruous feature in this setting. It would be a visually intrusive addition to the locality and, with the existing items of street furniture, would lead to a cluttered streetscene. Moreover, its incongruity in its context and its proximity to the historic stepped pavement, would harm the character and appearance of the TACA. Therefore, the siting and

appearance of the development would harm the character and appearance of the area including the TACA.

19. The harm arising to the TACA would be localised and less than substantial. Public benefits would arise from the proposal in terms of providing access to a USB charging point and free public WiFi as well as accessibility to a telephone kiosk for people with limited mobility, including wheelchair users. However, in this case, these do not outweigh the harm to the heritage asset identified.
20. The Council's decision notice also refers to the impact on the Rainbow Theatre which is a Grade II* listed building. However, this is some miles from the site and the proposal would have no impact on its setting.

Pedestrian safety

21. During the time of my site visit, the street was very busy with pedestrians travelling past the appeal site to the restaurants, shops, and offices in the vicinity. As well as the kerbside steps, there are tables and chairs associated with the nearby public house that are laid out on the footway. These elements constrain existing pedestrian flow.
22. The primary test provided by the appellant for establishing the suitability of the appeal site, (derived from the Transport for London document Pedestrian Comfort Guidance) suggests that as the pedestrian flow is high, the footway should be 5.3m in width. The pavement width has been calculated by the appellant to be 7m. However, the appellant's diagram fails to take into account the pub's forecourt and seating area directly adjacent to the site which already reduces the width of the pavement significantly. The Council suggest this reduction is around 2.5m, which does not seem an unreasonable estimate. As such, I consider the actual unobstructed width of the pavement to be considerably less, and given the busy pedestrian flows, I consider that the proposal's siting would impede pedestrian movement and adversely affect pedestrian safety.

Appeal D: 4 Upper Street, London N1 0PQ

23. The proposed call box would be sited on a stretch of pavement on the western side of Upper Street, close to the junction with Liverpool Road. This stretch of road is a busy commercial district characterised by a mix of modern and historical buildings, generally with shops occupying the ground floors.
24. The site is also within the TACA whose significance, as noted above, is provided by its prominence as the historic main thoroughfare through Islington with the stepped pavements being a noted historic feature. The site is on a stretch of pavement already characterised by a fair amount of street furniture. There is a food kiosk nearby as well as two existing phone kiosks, a row of trees, a road sign, two lampposts, and two cycle stands.
25. I recognise that the style of the proposal would be functional and its height responds to the requirements of the telecommunications equipment within. However, due to its imposing height and width, being greater than most other man-made street furniture in the immediate vicinity, and the odd appearance of the roof-mounted solar panels, it would appear dominant and incongruous in this setting. It would be a visually intrusive addition to the locality and lead to a cluttered streetscene when seen from various positions along Upper Street. Moreover, the functional design of the structure, its cluttering effect, and its

position next to a stepped part of the pavement, would detract from the character and appearance of the TACA. Therefore, the siting and appearance of the development would harm the character and appearance of the area including the TACA.

26. The harm arising to the TACA would be localised and less than substantial. There are public benefits from the proposal in terms of providing access to a USB charging point and free public WiFi as well as accessibility to a telephone kiosk for people with limited mobility, including wheelchair users. However, in this case, these do not outweigh the harm to the heritage asset.

Pedestrian safety

27. During the time of my site visit, the street was very busy with pedestrians. In particular there were a number of static pedestrians congregating at the site location whilst waiting for buses at nearby stops.
28. The proposed telephone kiosk would reduce the useable width of the pavement. I note the analysis of the appellant's highways consultant that the proposal would accord with the Pedestrian Comfort Guidance produced by Transport for London and would not compromise pedestrian intervisibility or safety. Nonetheless, this takes no account of the step in the pavement which, in practice, discourages pedestrians from walking on this lower section of the pavement between the appeal site and the road. As such the effective width of the pavement here is considerably narrower than the 10m suggested by the appellant. Given this, and the busy pedestrian flows, particularly at peak commuting times, I consider that the proposal would impede pedestrian movement and adversely affect pedestrian safety.

Other Matters

29. My attention has been drawn to several other appeal decisions. I do not have the full details of the other cases and so cannot determine whether the circumstances are analogous to the proposals before me. Notwithstanding this, some of the other cases are within other local planning authority areas, and each site has its own setting. As such, the other appeal decisions referred to are not determinative points in favour of the proposal.
30. The appellant states the term 'clutter' would suggest the public call box is not needed. However, need and clutter are different considerations, and whilst the need for the boxes in principle is not disputed, the effect of their siting on their context is a matter that needs consideration.
31. The appellant states the design of the call box has been designed to be less visually intrusive and dominant than a previous version design. However, consideration of the appearance of the box in its context, as well as its siting, go beyond just the design of the development.
32. The benefits put forward by the appellant in favour of the proposed call boxes, including the public benefits, have been taken into consideration. However, these do not outweigh the harm associated with these proposals.

Overall Conclusions

33. In all cases I have found the siting and appearance of the boxes would harm the character and appearance of their surroundings. In addition, the case of

Appeals C and D, I have found the proposal's siting would be detrimental to pedestrian safety.

34. In my considerations I have had regard to Policy CS8 of Islington's Core Strategy (February 2011) (the 'Core Strategy'), Policy DM2.1 of Islington's Local Plan: Development Management Policies (June 2013) (the 'Local Plan') and policy 7.4 of the London Plan (March 2016) (the 'London Plan') which all seek to ensure high quality design and protect local character. I have also had regard to Core Strategy Policy SC9 and Local Plan Policy DM2.3 which seek to ensure new development conserves and enhances the historic environment, and Local Plan Policy DM2.7 which aims to ensure telecommunications equipment is appropriately sited to minimise visual effects and protect the character and appearance of the area. I have also accounted for Local Plan Policies DM8.1, DM8.2 and DM8.4, policies 6.10 and 7.5 of the London Plan and draft policies T2 and D7 of the London Plan Draft for Public Consultation (December 2017) which all generally seek to promote and prioritise opportunities for walking and cycling and ensure safe and efficient operation of transport infrastructure.
35. I have also had regard to the Islington Streetbook Supplementary Planning Document (2012), The Islington Urban Design Guide (2017), and the Transport for London Streetscape Guidance Third Edition (2017 Revision 1) which all advise on the design of development in the public realm.

Recommendation

36. For the reasons given above and having had regard to all other matters raised, I recommend that all four appeals should be dismissed.

Thomas Courtney

APPEAL PLANNING OFFICER

Inspector's Decision

37. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis all the appeals are dismissed.

Andrew Owen

INSPECTOR