



Appeal Decisions

Site visit made on 11 November 2019 by Mariam Noorgat BSc (Hons)

Decisions by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th 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 Council of the London Borough of Hackney.
 - The development proposed in each case is a public call box.
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Appeal A - Ref: APP/U5360/W/19/3225732

Public Highway, Marsh Hill Adjacent Humberton Close, London E9 5TW

- The application Ref: 2018/2937, dated 6 August 2018, was refused by notice dated 2 October 2018.
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Appeal B - Ref: APP/U5360/W/19/3230799

Public Highway, Adj. 205 Morning Lane, London E9 6LG

- The application Ref: 2018/4096, dated 6 November 2018, was refused by notice dated 13 December 2018.
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Appeal C - Ref: APP/U5360/W/19/3230802

Public Highway, 63 Amhurst Road, London E8 1LL

- The application Ref: 2018/4064, dated 6 November 2018, was refused by notice dated 13 December 2018.
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Appeal D - Ref: APP/U5360/W/19/3230801

Public Highway, 2 Down's Court Parade, Amhurst Road, London E8 2AQ

- The application Ref: 2018/4093, dated 6 November 2018, was refused by notice dated 13 December 2018.
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Decisions

1. The 4 appeals are all 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 and Background

3. Whilst the 4 appeals relate to different sites, the proposed public 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 condition 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 need 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 High Court has considered the issue of the inclusion of advertising on public call boxes. 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 call boxes are relatively simple, thin, freestanding structures with a canopy which serves as a shelter and is made of the solar panels that will power the payphone. In addition, the widest faces of the call box incorporate photovoltaic glass to maximise the energy generating potential. LED lighting strips on the outside edges of the call box are included

for safety purposes, solely to identify the edge of the structure on the pavement during hours of darkness and will be in a customisable contrasting colour. The submitted details indicate that the overall colour of the call box is customisable but would typically be 'gun metal' grey or black and will have a 'sheen' through the integral use of toughened glass and photovoltaic glass in the structure. In my view, 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 and not dual purpose.

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:

- a) The effect of the siting and appearance of the proposed call box on the character and appearance of the surrounding area; and
- b) The effect of the siting of the proposed call box on pedestrian safety.

I have considered all the appeals in respect of the first main issue and Appeals C and D are additionally considered against the second.

Reasons

Appeal A - Marsh Hill Adjacent Humberton Close

11. The appeal site is situated on a fairly wide pavement near to an entrance to residential flats to the south. The immediate vicinity of the appeal site contains trees which are positioned centrally along the pavement. Views from the east towards the west are of a neat, open pavement due to the spacious, rhythmic and aligned placement of the trees and general absence of man-made street furniture. There is one large directional sign to the east, prior to the stretch of trees, and other street furniture to the west such as a lamp post and signage post. These are situated in a manner that does not detract from the open and rhythmic character of this section of the pavement within which the appeal site sits.
12. The call box would not align with the surrounding trees or the wider street furniture. As such, the presence of the call box would be conspicuous to pedestrians and road users and would detract from the rhythmic nature of the street. Also the scale of the call box differs to the majority of the street furniture in terms of its width and bulk and would appear to be a prominent and incongruous addition which would detract from the open nature of this section of the street. As such, the siting and appearance of the call box would detract from the quality of the public realm and unacceptably harm the character and appearance of the surrounding area.

Appeal B – Adj. 205 Morning Lane

13. The appeal site is situated on a fairly wide pavement in front of a school. The street furniture near the appeal site consists of, lamp posts, a litter bin, a bus shelter and a call box. Although these items of street furniture are spaced and aligned differently, there is a significant amount of spacing in between most of the street furniture which provides a sense of spaciousness.
14. The proposed call box would introduce an element of clutter to this section of the pavement, it would be placed amid a significant gap in between a call box of traditional design and a CCTV post. As such, the presence of the call box would be conspicuous to pedestrians and road users and detract from the spacious nature. Also, the close proximity of the proposed call box to another call box would appear inconsistent due to the larger scale and bulkier appearance, but similar function, to what is already present. Although I am aware that different providers would have different designs, in this instance this difference would detract from the character and appearance of the immediate vicinity. As such, the call box would appear to be a prominent and incongruous addition, adding harmful clutter to the area that would detract from the quality of the public realm. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.

Appeal C – 63 Amhurst Road

15. The appeal site is situated on a fairly wide pavement in front of buildings which have commercial units to the ground floor and residential units above this. The immediate vicinity of the appeal site contains a cluster of street furniture that includes two directional signs, a call box of traditional design and a traffic speed camera post, all of which are spaced differently. Other street furniture to the east and west are a significant distance away and do not appear to be grouped like those around the appeal site. In that context, the immediate vicinity of the appeal site appears untidy and cluttered.
16. The proposed call box would add to the clutter at this section of the pavement, exacerbating the present proliferation of street furniture. The close proximity of the proposed call box to another call box would appear inconsistent due to the larger scale and bulkier appearance to what is already present. Although I am aware that different providers would have different designs, in this instance however, this difference would detract from the character and appearance of the immediate vicinity. As such, the call box would appear to be a prominent and incongruous addition, adding further clutter to the area that would detract from the quality of the public realm. For these reasons, the siting and appearance of the proposed call box would cause unacceptable harm to the character and appearance of the surrounding area.
17. The site is opposite the Clapton Square Conservation Area. The Council raise no concerns in respect of the effect of the development on the setting of this conservation area, and I have no reason to consider otherwise.

Pedestrian safety

18. The appellant submitted a document as part of this appeal that shows the proposed public call box's position on the pavement, its distance from the road edge and the width of the remaining unobstructed footway following its

installation. The box would adhere to Transport for London (TfL) Streetscape Guidance (footway clear zone) which requires a 2m clear footway. It would also adhere to, based on a low pedestrian flow, the TfL Pedestrian Comfort Guidance, 2010. Though I note the proximity of bus stops and a train station, a low level of pedestrian flow is what I witnessed during my site visit. From the excerpts of Manual for Streets provided by the Council's Traffic and Transportation Consultee, it can be seen that the advice therein is echoed within the Pedestrian Comfort Guidance and the Streetscape Guidance.

19. The Officer report states the footway outside the commercial units is privately owned and could be used for business purposes. I do not have any evidence to indicate that these commercial units would utilise the private footway, nor did I witness any business associated street furniture during my site visit and indeed it felt as part of the public pavement.
20. Overall, I do not consider the siting of the proposal would be harmful to pedestrian safety.

Appeal D – 2 Down's Court Parade

21. The appeal site is situated on a pavement in front of buildings which have commercial units to the ground floor and residential units above this. This stretch of pavement, in between the junctions with Bodney Road and Pembury Road, has tall street furniture like lamp posts, traffic lights and signage, and at low level there is a litter bin. Most of this street furniture, is situated close to the junctions to the east and west. There is one lamp post situated in between the street furniture at the junctions to the east and west, which provides a sense of symmetry when viewed from the south. The appeal site therefore has an open and neat feel as most of the street furniture is contained at either end of this stretch of pavement.
22. As the proposed call box would be located on a section of pavement that is largely devoid of street furniture, it would be conspicuous to pedestrians and road users. It's siting in between a lamp post and street furniture to the west would unbalance the current symmetrical view from the south. Furthermore, the scale of the call box differs to the surrounding street furniture in terms of its width and bulk and would appear to be a prominent and incongruous addition. As such, the siting and appearance of the call box would detract from the quality of the public realm and unacceptably harm the character and appearance of the surrounding area.

Pedestrian safety

23. From the appellant's evidence, the box would adhere to the TfL Streetscape Guidance (footway clear zone) and the TfL Pedestrian Comfort Guidance based on a low pedestrian flow. From the excerpts of Manual for Streets provided by the Council's Traffic and Transportation Consultee, it can be seen that the advice therein is echoed within the Pedestrian Comfort Guidance and the Streetscape Guidance.
24. Though I note the proximity of bus stops and a train station, I witnessed a low level of pedestrian flow during my site visit. Overall, therefore I do not consider the siting of the proposal would be harmful to pedestrian safety.

Other Matters

25. I have taken into account the benefits advanced by the appellant in favour of the proposed call boxes, including 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, these do not outweigh the harm associated with these proposals.
26. The appellant has referred to some appeal decisions, and court cases, regarding similar proposals for the installation of telephone call boxes. However, I do not have the full details of those cases and so have considered each proposal before me on its own individual merits and the specific circumstances and context of each site.
27. 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.
28. 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.

Overall balances and Conclusions

29. For all appeals, the siting and appearance of the proposed call boxes would cause unacceptable harm to the character and appearance of the surrounding area.
30. For Appeals C and D, although I do not find there to be detrimental harm to pedestrian safety with regards to the siting of the proposed call boxes, this would not outweigh the harm created by their siting and appearance in relation to their effect on the character and appearance of their surroundings.
31. I have had regard to Policy DM1 of the Hackney Local Plan, Development Management Local Plan, Adopted July 2015 (the 'Local Plan') which seeks to ensure all developments are well designed and respect their local character. Local Plan Policy DM30 also seeks the same with respect to telecommunication development.
32. I have also had regard to Policies DM45 and DM46 of the Local Plan and Policy 33 of the Hackney Local Development Framework, Core Strategy, Hackney's Strategic Planning Policies for 2010-2025, Adopted November 2010 which seek to encourage walking. I have also had regard to the Local Development Framework, Supplementary Planning Document, Public Realm Strategy, February 2012 which aims to ensure a high-quality public realm.

Recommendation

33. For the reasons given above, and having regard to all other matters raised, I conclude that all 4 appeals should be dismissed.

Mariam Noorgat

APPEAL PLANNING OFFICER

Inspector's Decision

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

Andrew Owen

INSPECTOR