



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 Tower Hamlets.
 - The development proposed in each case is a public call box.
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Appeal A - Ref: APP/E5900/W/19/3225244

Public Highway, Devons Road corner Watts Grove, London E3 3QX

- The application Ref: PA/18/02009, dated 6 August 2018, was refused by notice dated 27 September 2018.
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Appeal B - Ref: APP/E5900/W/19/3231225

Public Highway, Mile End Road adjacent Tracy House, London E3 4PP

- The application Ref: PA/18/03183, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal C - Ref: APP/E5900/W/19/3225257

Public Highway, Grove Road adjacent Mile End Park, London E3 5BE

- The application Ref: PA/18/02006, dated 6 August 2018, was refused by notice dated 27 September 2018.
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Appeal D - Ref: APP/E5900/W/19/3229580

Public Highway, Roman Road near junction Bonner Street, London E2 0QY

- The application Ref: PA/18/02835, dated 1 October 2018, was refused by notice dated 26 November 2018.
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Appeal E - Ref: APP/E5900/W/19/3229577

Public Highway, Roman Road adjacent Globe Town Market, London E2 0RN

- The application Ref: PA/18/02831, dated 1 October 2018, was refused by notice dated 26 November 2018.
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Appeal F - Ref: APP/E5900/W/19/3231290

Public Highway, 243 Bethnal Green Road, London E2 6AB

- The application Ref: PA/18/03190, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal G - Ref: APP/E5900/W/19/3231335
Public Highway, Bethnal Green Road near junction St. Matthew's Row, London E2 6DR

- The application Ref: PA/18/03167, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal H - Ref: APP/E5900/W/19/3231297
Public Highway, 267 Bethnal Green Road, London E2 6AH

- The application Ref: PA/18/03185, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Decisions

1. The 8 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 8 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 eight 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.

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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 proposed public 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 are 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;
 - b) The effect of the siting of the proposed call box on pedestrian movement and safety; and

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- c) The effect of the siting of the public call box on crime and anti-social behaviour.

I have considered all the appeals individually in respect of the first main issue, and then considered them collectively against the second. Appeals A to G are additionally considered collectively against the third.

Reasons

Appeal A - Devons Road corner Watts Grove

11. The appeal site is situated on a very wide pavement at the junction of Devons Road with Watts Grove, in front of a block of residential flats that contains a landscaped area at its front. The immediate vicinity of the appeal site contains very little street furniture other than trees and two lamp/sign posts. A short distance away to the south-west of the appeal site the street furniture includes a bus stop, call boxes and bollards. This amounts to a congested view when seen in the street scene. As such, in comparison, the appeal site provides an open feel, especially considering the adjacent landscaping in front of the flats.
12. The presence of the call box on this relatively open section of pavement would appear conspicuous to pedestrians and road users. The scale of the call box differs to the nearby street furniture in terms of its width and bulk and would appear to be a prominent and incongruous addition which would detract from open nature of this section of the street. It would give the impression of 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.
13. All Hallows Church is a locally listed building and is situated to the north of the appeal site. The Council raise no concerns in respect of the effect of the development on the setting of this locally listed building, and I have no reason to consider otherwise.

Appeal B – Mile End Road adjacent Tracy House

14. The appeal site is situated on a relatively wide pavement in front of residential flats. This stretch of pavement, in-between the junctions with Southern Grove and Brookesley Street, differs in character considerably from one end to the other. The pavement at the east contains various street furniture such as bicycle racks, a post box, litter bin and an advertisement stand which are aligned and spaced differently. The pavement in the west, outside the residential flats (Tracey House) consists of trees, sign posts and a lamp post which are similar in scale and are aligned with each other. There are also low-level equipment cabinets and litter bins abutting the boundary wall of Tracey House. Overall, this western section of the pavement provides a neat view when approaching from the east and it therefore makes a positive contribution to the street scene.
15. The proposed call box would introduce an element of clutter to this western section of the pavement. The scale of the call box differs to the nearby street furniture in terms of its width and bulk and would appear to be a prominent and incongruous addition, detracting from the neat view from the east. It would appear to extend the present proliferation of street furniture from the east into an uncluttered area. 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 this part of the street scene.

16. The site is a short distance from the Tower Hamlets Cemetery Conservation Area (THCCA), the Tredegar Square Conservation Area (TSCA), the Grade II Listed Buildings at 439 to 455 Mile End Road to the north of the site and St Clements Hospital to the west of the site. I witnessed various items of street furniture around the Conservation Areas including directional signs, litter bins and equipment cabinets. Outside the Listed Buildings I witnessed advertisement stands, equipment cabinets and litter bins. These all influence the setting of the heritage assets. I consider that, due to this variety of street furniture in the wider area, the proposal would have a neutral effect on the setting of the aforementioned listed buildings, the THCCA and the TSCA as it would not unduly disrupt views of these heritage assets or how they are experienced. However, the lack of harm to these heritage assets does not lessen the harm the call box would cause to the character and appearance of the immediate area.

Appeal C – Grove Road adjacent Mile End Park

17. The appeal site is situated on a pavement in front of a park, opposite residential flats. The immediate vicinity of the appeal site contains a lamp post and a traffic light, with other street furniture a significant distance away. As such, the appeal site has an open feel, especially considering the nearby park.
18. The proposed call box would therefore be located on a section of pavement that is largely devoid of street furniture and so would introduce an alien feature. Furthermore, the scale of the call box differs to the few existing items of surrounding 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 and 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 D – Roman Road near junction Bonner Street

19. The appeal site is situated on a relatively wide pavement in front of an open public area which leads onto Cranbrook Estate. This public area contains four benches for seating, aligned east to west, and landscaping. There are various types of street furniture in the vicinity, however it could be seen that this section of pavement, in front of the public seating area, mainly consisted of low-level street furniture such as bollards, a litter bin and an equipment box. This allows unrestricted views onto Roman Road from the bench and a sense of spaciousness when approaching from the east or west. As such, the appeal site has an open feel, especially considering the open public area to the north.
20. Therefore, the provision of the proposed call box on a section of pavement that is largely devoid of tall street furniture would give the impression of adding harmful clutter to the area which differs to the surrounding street furniture in terms of its scale. It would appear to be a prominent and incongruous addition which would detract from the open views from the public seating area and the general spacious nature of this section of the street. As such the siting and appearance of the proposed call box would detract from the quality of the

public realm and cause unacceptable harm to the character and appearance of the surrounding area.

Appeal E – Roman Road adjacent Globe Town Market

21. The appeal site is situated on a relatively wide pavement in front of an open plaza which leads onto buildings that contain commercial units to the ground floor and residential flats to the upper floors. The stretch of pavement in front of this open area consists of various items of street furniture such as bicycle hire docking stations, bike stands, lamp posts, crossing posts, litter bins, a bench and a call box though, contrary to the officer's report, no large trees. The proposed call box would be sited in between a litter bin and a crossing post. Other than the regularity of the bicycle docking stations, the street furniture along this stretch of pavement is spaced and aligned differently. As such, views from the east and west to this section of pavement, even with the open area to the south, are of an irregular and untidy area.
22. The proposed call box would introduce a further element of clutter to this section of the pavement, adding to the present jumbled proliferation of street furniture. The scale of the call box differs to the immediate surrounding street furniture in terms of its width and bulk and would appear to be a prominent and incongruous addition, exacerbating the irregular views. The call box would therefore detract from the quality of the public realm and unacceptably harm the character of this part of the street scene. 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.
23. The Globe Road Conservation Area is situated close to the appeal site. The Council raise no concerns in respect of the effect of the development on this heritage asset, and I have no reason to consider otherwise.

Appeal F – 243 Bethnal Green Road

24. The appeal site is situated on a relatively wide pavement in front of a terrace which predominantly contains commercial units to the ground floor and residential units above this. The stretch of pavement in front of the terrace contains various items of street furniture such as lamp posts, litter bins, a bus shelter and a call box. All the street furniture is spaced and aligned differently, and it therefore provides an irregular view when seen from surrounding areas.
25. In that context the proposed call box would introduce a further element of clutter to this section of the pavement. The proposed call box would be sited in between a litter bin and a lamp post and therefore the scale of the call box, in terms of its width, would considerably differ from these structures and would appear to be a prominent and incongruous addition, adding to the untidy character of the area. The siting and appearance of the call box would therefore detract from the quality of the public realm and unacceptably harm the character and appearance of this part of the street scene.

Appeal G – Bethnal Green Road near junction St. Matthew's Row

26. The appeal site is situated on a relatively wide pavement in front of residential flats that contains an open forecourt with a low boundary wall. The immediate vicinity of the appeal site contains low level street furniture like equipment boxes abutting the boundary wall, and one lamp post near the pavement edge to the north. Given that the majority of the street furniture is low key, the

appeal site has an open and spacious feel, especially considering the adjacent open area at the flats.

27. The proposed call box would therefore be located on a section of pavement that is largely devoid of significant street furniture. As such, the presence of the call box would be conspicuous to pedestrians and road users and would give the impression of adding harmful clutter. It's siting near the boundary of the open forecourt would further have a detrimental impact on the sense of openness. The scale of the call box, in terms of its width and bulk, would considerably differ to the street furniture it would be sited near and would appear to be a prominent and incongruous addition. As such, the siting and appearance of the proposed call box would detract from the quality of the public realm and cause unacceptable harm to the character and appearance of the surrounding area
28. The Fournier Street Conservation Area and a Grade II Listed Building, No.20 St Matthews Row, are situated to the south-east of the site. The Council raise no concerns in respect of the effect of the development on the setting of these heritage assets, and I have no reason to consider otherwise.

Appeal H – 267 Bethnal Green Road

29. The appeal site is situated on a relatively wide pavement in front of buildings with commercial units to the ground floor and residential flats to the upper floors. There are various items of street furniture present but the majority of the street furniture near to the appeal site consists of low-level items such as equipment cabinets and litter bins. At high level there are different types of posts. Although the street furniture is aligned and spaced differently, most of the taller street furniture is well spaced apart. This combined with the low-key nature of the low-level street furniture, provides for an open and spacious feel.
30. The proposed call box would introduce an element of clutter to this section of the pavement. The proposed call box would be sited in between an equipment cabinet and a lamp post which would reduce the space between these structures, to the detriment of the open and spacious feel. The scale of the call box, in terms of width and bulk, would considerably differ to the street furniture it would be sited in between, and so would appear to be a prominent and incongruous addition. The siting and appearance of the call box would therefore detract from the quality of the public realm and unacceptably harm the character and appearance of this part of the street scene.

Pedestrian movement and safety (all Appeals)

31. Although there is not an accurate depiction of the proposed call boxes' orientation on the sites within the appellants evidence, it is sufficient to allow an accurate consideration of the effect of its siting, when taking measurements of the box into account.
32. At each site, the number of pedestrians passing on the respective sections of pavement appeared low, with the exception of the sites for Appeals F, G and H where I consider the volume of pedestrians was greater. The appellant submitted documents that show the proposed public call boxes positions on the pavement, their distance from the road edge and the width of the remaining unobstructed footway following its installation. In all cases I consider the boxes would adhere to Transport for London (TfL) Streetscape Guidance (footway clear zone) and TfL Pedestrian Comfort Guidance, 2010.

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33. The objections from the Council's Transport and Highways team and TfL generally relate to the desire to minimise clutter to improve pedestrian movement, particularly for those with disabilities. Whilst I agree that the proposals would contribute clutter, which would detract from the character and appearance of the area; as the guidelines referred to above are met, I do not consider the siting of the boxes would be harmful to pedestrian movement or safety.

Crime and Anti-social behaviour (Appeals A to G)

34. The Metropolitan Police objected to the call boxes in regard to their role in facilitating anti-social behaviour and crime, in particular drug misuse. However, I have no conclusive evidence to demonstrate that this would be the case at these specific sites, especially as the evidence provided relates to a 1-mile radius which, in an urban environment such as this, can cover a number of differing neighbourhoods.
35. All the phone boxes would be located within active pedestrian thoroughfares and, as the design of the proposal does not include any enclosing walls, users would be visible to wide public surveillance by pedestrians and other road users on both sides. As such, I am not persuaded that the siting or appearance of any of the proposals would be likely to facilitate crime or anti-social behaviour in their areas.

Other Matters

36. 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.
37. 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.
38. 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.
39. 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

40. In all the appeals I have found that the siting and appearance of the boxes would harm the character and appearance of the areas.
41. I do not find there to be detrimental harm to pedestrian movement and safety, nor, for appeals A to G, would the boxes be likely to facilitate crime or anti-

social behaviour. Nonetheless, these matters would not outweigh the harmful effect on the character and appearance of their surroundings.

42. I have had regard to Policies SP12 and SP10 of the Tower Hamlets Core Strategy Development Plan Document 2025, Adopted September 2010, (the 'Core Strategy'), Policies DM24 and DM25 of the Managing Development Document Development Plan Document, Adopted April 2013, (the 'Development Plan') and Policies 7.4 and 7.5 of The London Plan, The Spatial Development Strategy for London Consolidated With Alterations Since 2011, March 2016, (the 'London Plan'), which all seek to ensure developments are well designed and respect their local character. Further, regard has been paid to Policy SP10 of the Core Strategy, Policy DM27 of the Development Plan and Policy 7.8 of the London Plan which seek to protect heritage assets and their settings.
43. I have also had regard to Policy SP09 of the Core Strategy and Policy DM20 of the Development Plan which seek to ensure highway safety is not compromised, Policy DM23 of the Development Plan which seeks to promote permeability, and Policies 6.9B and 6.10B of the London Plan which seek to encourage cycling and walking respectively.

Recommendation

44. For the reasons given above, and having regard to all other matters raised, I conclude that all 8 appeals should be dismissed.

Mariam Noorgat

APPEAL PLANNING OFFICER

Inspector's Decision

45. 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