
Appeal Decision

Site visit made on 3 December 2019

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th January 2020

Appeal Ref: APP/N5660/W/19/3229259

Public Highway, 94 Norwood High Street, London, SE27 9NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd. against the decision of the Council of the London Borough of Lambeth.
 - The application Ref: 18/04267/G24 dated 1 October 2018, was refused by notice dated 26 November 2018.
 - The development proposed is described as a public call box.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As a licensed electronic communications code operator, the appellant benefits from deemed planning permission for the proposed public call box erected as communications apparatus that falls 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 (the GPDO), subject to the prior approval requirements under paragraph A.3. The appellant applied to the Council on that basis. The Council determined that prior approval was required for the siting and appearance of the communication apparatus.
3. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force on 25 May 2019, amending the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO 2015). This amendment removes the permitted development right to install a public call box under Schedule 2, Part 16, Class A of the GPDO.
4. 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 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. This is the case in respect of the appeal before me and I have considered the appeal on this basis.
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 CC v SSHCLG & New World Payphones Ltd* [2019] EWHC 176 (Admin) (the

Westminster judgement) considered the matter of development for the purpose of an electronic telecommunications code operator's electronic communications network for the purposes of Class A, Part 16 of the GPDO.

6. The Council determined the application for prior approval before the passing down of the Westminster judgement and the reasons for refusal do not refer to it or the purpose of the proposed call box. Instead the reasons for refusal relate to matters of siting and appearance. However, the Westminster judgement confirmed that an assessment as to whether a telecommunications apparatus comes within the scope of Class A, Part 16 of the GPDO has to be made before siting and appearance are considered.
7. The Norwood Forum, the Norwood Planning Assembly and the Norwood Action Group refer to the potential use of the proposed call box for the display of advertisements, citing the use of other structures in the Borough for advertising. However, the provision of telecommunications apparatus and the display of advertisements are distinct and separate matters requiring permission / consent under different regimes and consequently separate applications. My determination of this appeal has been made on this basis.

Main Issue

8. Having regard to the Westminster judgement, the main issue for this appeal is whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Reasons

9. The appellant has provided Counsel's opinion on the relevance of the Westminster judgement to the appeal before me. The opinion states "*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*".
10. 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.*"
11. The proposed call box is shown on the drawing MAX 2 ASSEMBLY Rev C dated 06.09.18 as comprising a slim panel with a payphone on one side and a 'non-illuminated display panel', with a 'visual area' measuring 1100 mm x 1700 mm on the other. From this evidence, the rear side of the proposed call box would incorporate a panel that is specifically designed for a display purpose and thereby result in the proposed structure at least partly falling outside Class A,

Part 16 of the GPDO. This is irrespective of whether the display panel would also be used to access the internal equipment for maintenance purposes.

12. Accordingly, I conclude that that the proposed development is not solely for the purpose of the operator's electronic communications network and, as such, it falls outside Schedule 2, Part 16, Class A of the GPDO. For this reason, it is not necessary to consider matters of siting or appearance, because this appeal should be dismissed.

Martin Small

INSPECTOR