
Appeal Decisions

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: 10th January 2020

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeals are made by Maximus Networks Ltd. against the decisions of the Council of the London Borough of Lambeth.
 - The development proposed in each case is described as a public call box.
-

Appeal A Ref: APP/N5660/W/19/3231545

Public Highway, Adj 83-101 The Cut, London, SE1 8LL

- The application Ref: 18/04784/G24 dated 5 November 2018, was refused by notice dated 27 December 2018.
-

Appeal B Ref: APP/N5660/W/19/3231368

Public Highway, Waterloo Road, Adj The Old Vic, London, SE1 8NB

- The application Ref: 18/04785/G24 dated 5 November 2018, was refused by notice dated 19 December 2018.
-

Appeal C Ref: APP/N5660/W/19/3231531

Public Highway, Adj 66 The Cut, London, SE1 8LX

- The application Ref: 18/04794/G24 dated 5 November 2018, was refused by notice dated 24 December 2018.
-

Appeal D Ref: APP/N5660/W/19/3231536

Public Highway, 110 The Cut, London, SE1 8LN

- The application Ref: 18/04791/G24 dated 5 November 2018, was refused by notice dated 27 December 2018.
-

Appeal E Ref: APP/N5660/W/19/3231544

Public Highway, 81-83 Waterloo Road, London, SE1 8UD

- The application Ref: 18/04816/G24 dated 5 November 2018, was refused by notice dated 27 December 2018.
-

Decisions

1. The appeals are dismissed.

Procedural Matters

2. These appeals relate to separate proposals for the installation of similarly designed public call boxes which would be sited at various locations within the London Borough of Lambeth. For simplicity, the appeals have been included on the same decision letter.
3. As a licensed electronic communications code operator, the appellant benefits from deemed planning permission for the proposed public call boxes 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.
4. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force on 25 May 2019, amending 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 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 applications for prior approval in respect of these appeals after the date of the Westminster judgement. However, the reasons for refusal do not refer to the judgement or to the purpose of the proposed call boxes. Instead the reasons for refusal relate to matters of siting and appearance. Nevertheless, 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. A number of third parties have referred to the use of other kiosks in the Borough for advertising and expressed concern that the proposed call box would also be used 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 these appeals has been made on this basis.

8. Third parties have also challenged the need for the proposed development in the light of existing telephone kiosks in the localities of the proposed call boxes and the use of mobile phones. However, paragraph 116 of the National Planning Policy Framework makes it clear that local planning authorities should not question the need for an electronic communications system or seek to prevent competition between different operators.
9. As permission has already been granted for the proposed call boxes, under the terms of Article 3(1) of the GPDO, the statutory duty under S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of a listed building does not apply to applications for prior approval.
10. However, the terms of chapter 16 of the National Planning Policy Framework (the Framework) are material. Paragraphs 190 and 194 recognise that development within the setting of a heritage asset can affect the asset's significance. Paragraph 200 sets out that "Proposals that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, heritage assets should be treated favourably".

Main Issue

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

Reasons

12. The appellant has provided Counsel's opinion on the relevance of the Westminster judgement to the appeals 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*".
13. 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.*"
14. The proposed call box in each case 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.

15. Accordingly, I conclude that that the proposed developments are not solely for the purpose of the operator's electronic communications network and, as such, they fall 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 these appeals should be dismissed.

Martin Small

INSPECTOR