
Appeal Decisions

Site visit made on 2 and 22 July 2019

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 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 Article 3, 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 decision of City of Westminster Council.
 - The development proposed in each case is described as prior approval for siting and appearance: installation of public call box.
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Appeal A Ref: APP/X5990/W/18/3211757

Adj. 334-348 Oxford Street, London W1A 1EF

- The application Ref 18/00876/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.
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Appeal B Ref: APP/X5990/W/18/3211652

Adj. 120 Regent Street, London W1B 5FE

- The application Ref 18/00903/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.
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Appeal C Ref: APP/X5990/W/18/3211664

Adj 117 Regent Street, London W1B 4HP

- The application Ref 18/00902/TELCOM, dated 1 February 2018, was refused by notice dated 21 March 2018.
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Decisions

1. The appeals are dismissed.

Procedural Matters

2. The appeals relate to proposals by Maximus Networks Ltd for the installation of an electronic communications apparatus comprising a telephone kiosk pursuant to Class 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (The GPDO). Whilst the appeals relate to 3 different sites in the City of Westminster Council, the proposed kiosks are identical. Therefore, in the interests of conciseness I shall consider each proposal in the same decision.
3. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the GPDO by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of an electronic communication code operator. This is

subject to transitional and saving provisions. For the purposes of the above appeals, the proposals fall to be considered against the provisions of Schedule 2, Part 16, class A of the GDPO. This sets out permitted development rights for development carried out by or on behalf of electronic telecommunication code operators for the purposes of the operator's electronic communication network, subject to prior approval by the local planning authority of siting and appearance.

4. A court judgement¹ confirms that the whole development for which prior approval is sought must fall within the Part 16 Class A. If a proposal is not solely for the purpose of the operator's network, then it is not permitted development and prior approval cannot be granted. In that case, the kiosk application was accompanied by an application for advertisement consent. The current appeal cases differ significantly in that no advertisements are proposed here. In my assessment, the proposed design of the call boxes is for the purpose of telecommunications. I have no evidence to suggest that the proposed development includes elements that are there for the purpose of advertising. I therefore find that the proposals are able to benefit from the permitted development provisions of Part 16 Class A. The possibility of future use for advertising is not material to these decisions.
5. The GPDO does not require the development to be judged against the development plan. I have had regard to development plan policies as material considerations, insofar as they relate to matters of siting and appearance.

Main Issues

6. The main issues are:
 - a) The effect of the siting and appearance of the proposed kiosk on the character and appearance of the area (All Appeals)
 - b) The effect of the development on the safe and efficient operation of the highway (All appeals)
 - c) The effect of the development on Heritage Assets (All Appeals)

Reasons

Appeal A – adj. 334-348 Oxford Street

Character and appearance

7. The appeal site relates to a wide section of pavement in an area dominated by a large retail premise. On my site visit I observed that there were street trees, a number of street cabinets, street lighting columns, bins and street seating. These features appeared to be concentrated near to the appeal site on the footway, but I observed that the street scene overall did not have a cluttered appearance.
8. The installation of call box in this location, would add to the existing street furniture. Having regard to the scale and mass of the proposed call box, with a height of around 2.6 metres and width of approximately 1.3 metres, it would appear as a prominent addition in the street scene. This would have an

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)

adverse effect of the visual amenity of the area, causing harm to character and appearance.

Highway

9. The appellant's site-specific highway analysis considers this location to have high pedestrian flows and this corresponds with my observations made on site. The existing pavement in this location is around 6.6 metres wide. The proposed call box would reduce the width of the pavement to approximately 4.4 metres, which the appellant details is above the preferred minimum footpath width of 2 metres. I have no evidence before me to suggest that the resultant pedestrian clear zone would be inadequate. Therefore, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Heritage

10. The site is situated in close proximity to the Harley Street and Mayfair Conservation Areas (CA), this area is characterised by buildings of a large scale with commercial properties at its heart. The Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to preserve or enhance the character or appearance of a conservation area.
11. Paragraph 193 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the assets conservation.
12. The appeal site is directly opposite the CA boundary, in this context the proposed kiosk would be seen as an intrusive feature, negatively affecting how the CA is experienced and therefore its setting. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the CA. As a result of the small scale of the proposal, the harm arising would be localised and less than substantial.
13. In line with paragraph 196 of the Framework I must assess whether the less than substantial harm is outweighed by the public benefits of the development. The call box would clearly contribute to the provision of a telecommunication network. However, I have no evidence before me that there is a deficiency in the network in this area or that there would be other public benefits of the scheme which would outweigh the great weight which must be given to the conservation of heritage asset.
14. I therefore conclude that the proposal would cause harm to the character and appearance of the conservation area through its impact on setting.

Appeal B - Adj. 120 Regent Street

Character and appearance

15. The appeal site relates to a reasonably wide section of open pavement. I observed at my site visit that there was very limited street furniture in this area and I observed that the street scene was open and uncluttered in appearance.
16. The installation of call box in this open location, with a height of around 2.6 metres and width of approximately 1.3 metres, would appear as a prominent and incongruous addition in the street scene adding clutter. This would have

an adverse effect of the visual amenity of the area, causing harm to character and appearance.

Highway

17. The appellant's site-specific highway analysis considers this location to have high pedestrian flows and this corresponds with my observations on site. The existing pavement in this location is detailed as being approximately 4.6m metres wide. The proposed call box would reduce the width of the pavement to around 3 metres, which the appellant details is above the preferred minimum footpath width of 2 metres. I acknowledge that the level of pedestrian traffic at this location is high, but I have no substantive evidence before me to suggest that the resultant pedestrian clear zone would be inadequate. Therefore, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Heritage

18. The site is situated in the Regent Street Conservation Area (CA), this area is generally described by the Council as having a "high degree of uniformity in terms of architectural style, materials and scale" which was evident at the site visit. The Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to preserve or enhance the character or appearance of a conservation area.
19. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
20. The appeal site is situated in a prominent location on the street, in this context the proposed kiosk would be seen as an intrusive feature, negatively affecting how the CA is experienced and therefore its setting. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the CA. As a result of the small scale of the proposal, the harm arising would be localised and less than substantial.
21. In line with paragraph 196 of the Framework I must assess whether the less than substantial harm is outweighed by the public benefits of the development. The call box would clearly contribute to the provision of a telecommunication network. However, I have no evidence before me that there is a deficiency in the network in this area or that there would be other public benefits of the scheme which would outweigh the great weight which must be given to the conservation of heritage asset.
22. I therefore conclude that the proposal would cause harm to the character and appearance of the conservation area through its impact on setting.

Appeal C - Adj 117 Regent Street

Character and appearance

23. The appeal site relates to a reasonably wide section of open pavement. I observed at my site visit that there was very limited street furniture in this area, and I observed that the street scene was open and uncluttered in appearance.

24. The installation of call box in this open location, with a height of around 2.6 metres and width of approximately 1.3 metres, would appear as a prominent and incongruous addition in the street scene. This would have an adverse effect of the visual amenity of the area, causing harm to character and appearance.

Highway

25. The appellant's site-specific highway analysis considers this location to have high levels of pedestrian flows. The existing pavement in this location is approximately 5.6 metres wide. The proposed call box would reduce the width of the pavement to just under 4 metres, which the appellant details is above the preferred minimum footpath width of 2 metres.
26. I acknowledge that the level of pedestrian traffic at this location is high and that the proposed kiosk would reduce the width of the pavement for pedestrian use, but I have no substantive evidence before me to suggest that the resultant pedestrian clear zone would be inadequate. Therefore, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

Heritage

27. The site is situated in the Regent Street Conservation Area (CA), this area is characterised by a high degree of uniformity in terms of architectural style, materials and scale, the site is also adjacent to the Grade II listed Vigo House. The Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to preserve or enhance the character or appearance of a conservation area and listed buildings.
28. Paragraph 193 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
29. The appeal site is situated in a prominent location on the street, in this context the proposed kiosk would be seen as an intrusive feature, negatively affecting the setting of the listed building and how the CA is experienced and therefore its setting. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the CA and the setting of the listed building. As a result of the small scale of the proposal, the harm arising would be localised and less than substantial.
30. In line with paragraph 196 of the Framework I must assess whether the less than substantial harm is outweighed by the public benefits of the development. The call box would clearly contribute to the provision of a telecommunication network. However, I have no evidence before me that there is a deficiency in the network in this area or that there would be other public benefits of the scheme which would outweigh the great weight which must be given to the conservation of heritage asset.
31. I therefore conclude that the proposal would cause harm to the character and appearance of the conservation area through its impact on setting.

Other matters

Both the Council and the appellant have drawn my attention to other similar appeals in the Westminster area and other London boroughs. However, I do not have the full details of these to assess their comparability to the cases before me. In any event each appeal should be considered on its individual merits having regard to its context.

Overall Conclusion

32. In all the appeals, I have concluded that the siting and appearance of the all boxes would harm the character and appearance of the areas in which they are located. The proposals would not comply with Policies S25 and S28 of the Westminster Plan (the LP) and Policies DES1 and DES7 of the City of Westminster Unitary Development Plan (the UDP). These policies seek to achieve high quality design in all townscape and to protect heritage assets.
33. I have also found that the proposals would fail to preserve or enhance the character or appearance of the CA and that the public benefits would not outweigh this harm. Accordingly, in the case of these two appeals, the proposals would conflict with the conservation objectives of Policies S25 and S28 of the LP and Policy DES10 (D) of the UDP.
34. I have also concluded in each case that the proposals would not cause harm to the safe and efficient operation of the highway meeting the aims of the Transport for London Pedestrian Comfort Guidance and the Streetscape Guidance. They would therefore comply with Policies S41 and S7 of the LP and policy TRANS3 of the UPD which aim to create a safe and attractive environment for pedestrians. Whilst this provides support to the proposals it does not outweigh my conclusions on the harm of the development in terms of character and appearance as stated above.
35. For the reasons outlined, and having had regard to all other matters raised, the appeals are dismissed.

Mark Brooker

INSPECTOR