



Appeal Decisions

Site visits made on 9 December 2019 by Darren Ellis MPlan

Decision by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th 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 decision of the London Borough of Tower Hamlets.
 - The development proposed in each case is installation of a public call box.
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Appeal A Ref: APP/E5900/W/19/3231294

Public Highway, Adj. 250 Bishopsgate, London, EC2M 4AA

- The application Ref PA/18/03164, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal B Ref: APP/E5900/W/19/3231299

Public Highway, 288 Bishopsgate, London, EC2M 4QP

- The application Ref PA/18/03175, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal C Ref: APP/E5900/W/19/3231328

Public Highway, Brushfield Street Corner Bishopsgate, London, EC2M 4AA

- The application Ref PA/18/03152, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Decisions

1. Appeals A-C are dismissed.

Appeal Procedure

2. The site visits were undertaken by an Appeal Planning Officer whose recommendations are set out below and to which the Inspector has had regard before deciding the appeals.

Procedural Matters and Background

3. As set out above, there are three separate appeals for the installation of an electronic communications apparatus comprising a public call box pursuant to Class 16 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Whilst each appeal relates to a different site, the proposed 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.
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4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, 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 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 three appeals before me.
 5. The provisions of the GPDO require the local planning authority to assess the proposed development solely upon the basis of its siting and appearance, taking into account any representations received. My determination of these appeals has been made on the same basis.
 6. The proposed 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.
 7. The High Court has considered the issue of the inclusion of advertising on public call boxes. A recent judgement in the Westminster¹ 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.
 8. 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'.
 9. Since the appeals were lodged, the Council has come to the view that in the light of the 'Westminster' judgement, the type of kiosk proposed in this instance has a dual purpose. I have taken into account the submitted Opinion of Counsel regarding this matter and the description of the proposed call boxes provided. 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

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) (5 February 2019).

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.

10. As the principle of development is established, considerations such as need for the call boxes are not relevant matters.
11. The provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have had regard to the policies of the development plan, any related guidance and the National Planning Policy Framework (Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.
12. I note that no indication has been provided as to the precise orientation of the call boxes in each case. As such, I have determined the appeals with reference to the identified location on the appellant's submitted location plans.

Main Issues

13. The main issues are:

- In each case, the effect of the siting and appearance of each call box on the character and appearance of the area, and
- In each case, the effect of the siting and appearance of each call box on the safe and efficient operation of the highway.

Reasons for the Recommendation

Appeal A - Adj. 250 Bishopsgate

14. The appeal site is located on the pavement outside of a large office building, with the character of the immediate environment being predominately commercial. The pavement close to the site hosts a bus stand, bicycle stands, traffic lights, an existing telephone kiosk and a post box.
15. I recognise that the style of the call box would be plain and simple, however the pavement is already cluttered with the aforementioned elements and the addition of the mass of the proposed approximately 3.1m high call box would cumulatively result in an increasingly cluttered appearance to the pavement and wider street scene. Therefore, the proposed call box would harm the character and appearance of the area.
16. During the time of my site visit, the street was busy with traffic travelling past the appeal site along both carriageway directions. I have seen nothing to suggest my observations are untypical. The area around the appeal site was busy with pedestrians although in this particular location the pavement is around 5m wide.
17. It is clear from the plans before me that the proposed call box would be located close to the outer edge of the pavement and would reduce the width of the pavement. The appellant's analysis details the high pedestrian flow at the site, and I note that for such a pedestrian flow the Streetscape Guidance produced by Transport for London (TfL) (SG) (2017) requires at least 5.3m of unobstructed pavement. The proposed call box would leave 3.6m of pavement space. Even though the proposed call box would be in alignment with the

existing street furniture, it would create a pinch point for pedestrians. For these reasons the proposed call box would reduce the width of the pavement enough to cause an obstruction and consequently would adversely affect the safe and efficient operation of the highway.

Appeal B - Public Highway, 288 Bishopsgate

18. The appeal site is located on the pavement outside of a large office building, with the character of the immediate environment being predominately commercial. The site is to the south-west of the Elder Street Conservation Area but is not in the Conservation Area.
19. The pavement close to the site hosts a road sign, a bus stop and utilities cabinets. I recognise that the style of the call box would be plain and simple, however the aforementioned elements are slender and relatively discreet whereas the proposed call box would be a bulky addition to the street scene. The addition of the mass of the proposed approximately 3.1m high call box would result in an increasingly cluttered appearance to the pavement and wider street scene. Therefore, the proposed call box would harm the character and appearance of the area.
20. During the time of my site visit, the street was busy with traffic travelling past the appeal site along both carriageway directions. I have seen nothing to suggest my observations are untypical. The area around the appeal site was busy with pedestrians although in this particular location the width of the pavement is between approximately 4-6m.
21. Due to the high pedestrian flow at the site, the SG recommends a pavement width of at least 5.3m. However, to make way for the bus stop and bus lane the pavement narrows to a width of approximately 4m in this location. The proposed call box would be sited on the wider section of pavement, immediately before it narrows. I note the appellant's analysis that shows that the proposed call box would leave a pavement width of 3.8m, which is lower than the recommendation of the SG. However, I am satisfied that a sufficient width of pavement would remain and given that pedestrians will be aware of the presence of the bus lane the call box would not cause an undue obstruction of the pavement and therefore would not harm highway safety.

Appeal C - Public Highway, Brushfield Street at the corner of Bishopsgate

22. The appeal site is located on wide area of pavement outside of a large office building, with the character of the immediate environment being predominately commercial. The site is a short distance from the western boundary of the Artillery Passage Conservation Area.
23. The pavement close to the site hosts tall street lighting columns, information boards, bicycle stands, an existing telephone kiosk and a small utilities cabinet. The approximately 3.1m high proposed call box would be a bulky addition to the street scene. Together with the aforementioned elements the additional mass of the proposed call box would cumulatively result in an increasingly cluttered appearance to the pavement and wider street scene. Therefore, the proposed call box would harm the character and appearance of the area.
24. During the time of my site visit, the street was busy with traffic travelling past the appeal site along both carriageway directions, and the pavement around

the appeal site was busy with pedestrians. I have seen nothing to suggest my observations are untypical.

25. The proposed call box would be located close to the outer edge of the pavement and would reduce the width of the pavement. However I note the appellant's analysis that shows that the proposal would accord with the SG with 6m of remaining pavement. The proposed call box would generally be in alignment with the existing street furniture and the remaining width of pavement would be sufficient to prevent the call box from causing an undue obstruction of the pavement, and consequently there would not be any harm to highway safety.

Other Matters

26. In relation to appeals A-C, my attention has been drawn to several other appeal decisions. I do not have the full details of the other cases and so cannot determine whether the circumstances are comparable to the proposals before me. Notwithstanding this, I note that some of the other cases are within other local planning authority areas where a different character and appearance will prevail. Moreover, the proposed call boxes have their own settings. As such, the other appeal decisions referred to are not determinative points in favour of the proposals.
27. The Metropolitan Police have provided a detailed consultation response objecting to the proposal. Police figures and intelligence show an increase in the visible presence of drug related activity as a consequence of existing, and similarly designed, free phone call kiosks within the Borough and throughout London. Nothing has been presented by the appellant to indicate that the statistics referred to by the police are inaccurate or misleading. However, the response from the police is of a general nature rather than being specific to the location in question. As set out above, the principle of call boxes is not a matter for consideration and I am mindful that a dismissal based on general concerns relating to crime and disorder, rather than concerns specifically relating to the site, would be contrary to that principle. Accordingly this issue has not been determinative in my consideration of the case.

Conclusion and Recommendation

28. As detailed above all of the appeals would cause harm to the character and appearance of the area, and additionally appeal A would cause harm to highway and pedestrian safety. For the reasons given above and having had regard to all other matters raised, I recommend that appeals A-C should be dismissed.

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

29. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis appeals A-C are dismissed.

S Ashworth

INSPECTOR