



Appeal Decision

Site visit made on 10 December 2019 by S Witherley

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th February 2020

All Appeals

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Paul O'Neil on behalf of Maximus Networks Ltd against the decision of the Council of the City of Westminster Council.
 - The development proposed in each case as described on the application form is for: a public call box.
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Appeal A – APP/X5990/W/19/3231071

15-17 Long Acre, London, WC2E 9LH

- The application, Ref 18/09295/TELCOM, dated 31 October 2018, was refused by notice 19 December 2018.
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Appeal B – Appeal Ref: APP/X5990/W/19/3231080

142 Long Acre, London, WC2E 9AD

- The application, Ref, 18/09286/TELCOM, dated 31 October 2018, was refused by notice 19 December 2018.
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Appeal C – Appeal Ref: APP/X5990/W/19/3231088

82 Charing Cross Road, London, WC2H 0BA

- The application, Ref, 18/09383/TELCOM, dated 2 November 2018, was refused by notice 21 December 2018.
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Decision

1. All the Appeals are dismissed.

Appeal Procedure – Appeals A to C

2. The site visit was 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 – Appeals A to C

3. In these Appeals, the design of the call box is the same, however, they are sited in different locations. Each proposal will be considered on its individual merits. As they raise similar issues and to avoid duplication, they 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 (GPDO) 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 these Appeals.
5. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed telephone kiosk under Article 3(1) Schedule 2, Part 16, Class A, Paragraph A.3(4) of the GPDO. The provision requires the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received.
6. A recent High Court judgment, *The Westminster judgement*¹, considered the issue of the inclusion of advertising on public call boxes and the matter of development for 'the purpose' of an electronic communications code operator's electronic communications network for the purposes of Part 16, Class A of GPDO. The 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'. Therefore, there is a requirement to ensure that a proposal is solely for the purpose of the operator's electronic network and not partly for some other use.
7. Following the outcome of *Westminster*, the appellant submitted additional information relating to each appeal. They have stated the proposals are solely for the purposes of telecommunications use. The call box includes an opening rear glass panel, which the appellant claims is to house the electronic equipment and enables access for maintenance, in addition to this, the proposals are not accompanied by an application for advertisement consent. Given the available evidence, it is considered that the kiosks proposed in these Appeals are unlikely to constitute a dual purpose.
8. The principle of development is established by the GPDO. Therefore, matters such as the need for the development are not at issue. In addition, whilst the appellant has referred to the purported benefits of the proposed kiosk, these matters have not been taken into account other than in respect of heritage assets where the National Planning Policy Framework (NPPF) advises where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
9. The appellant makes note in the appeal statement of examples of court cases and appeals relating to the siting of similar proposals. These examples will be taken into account, but there is limited information as to the detailed siting and appearance of these other proposals. In any case, each of the current proposals have been assessed on its individual merits with regard to its specific location and context.
10. From the officer report it is clear that the Council determined Appeal A on the basis that the proposal would be situated just outside the boundary of the Covent Garden Conservation Area (CA). However, in response to the appeal questionnaire the Council suggest that it may sit within the CA boundary. Having looked at the plans provided, the

¹ Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd [2019] EWHC 176 (Admin)

boundary appears to exclude the area from the CA. The Appeal site appears to be just outside but immediately adjacent to the boundary of the CA. I have considered the appeal on that basis. However, in considering the effect on the character or appearance of the CA fractional differences as to whether the proposal is within or outside the defined boundary make little difference to my assessment. If not within, the proposal would be very close to the edge of the CA and I have had regard to the effect on the character or appearance of the CA when making my recommendation.

11. From the information before me and from details observed at the time of the site visit, it is clear that there is a property address of No. 142 Long Acre. Accordingly, I have used the details given in the application form in the banner heading above. Despite the Council's concerns that such an address does not appear on the planning maps, the proposal would be situated on the pavement outside the building in the position shown on the submitted plans. There is no dispute as to exactly where the call box would be located and any uncertainty over the address given on the application form does not affect my recommendation which is based on the specific location of the proposal.

Planning Policy – Appeals A to C

12. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. The Council, in their assessment of the Appeals, have had regard to the following Policies; The City of Westminster Unitary Development Plan (2007) (DP) Policies DES 1, DES 7, DES 9, DES 10 and TRANS3. Westminster City Plan *Consolidated with all changes since November 2013* (2016) (CP) Policies S7, S25, S28, S41, and Westminster Way (2011). The appellant has referred to technical guidance contained within the *Pedestrian Comfort Guidance* produced by Transport for London (TfL) and the *TfL Streetscape Guidance 2017*. Regard has been given to these policies, related guidance and the Framework only in so far as they are a consideration relevant to matters of siting and appearance, designated heritage assets and the safe and efficient operation of the highway.

Main Issues – Appeals A to C

13. In all Appeals the main issues are as follows: 1) the effect of the siting and appearance of the proposed call box on the character and appearance of the area, including consideration of the effect of the development on designated heritage assets; and 2) the siting and appearance of the proposed call box on highway safety.

Reasons for the Recommendation – Appeals A to C

14. The call boxes are of the same 'Max 2 Assembly Rev C' design. This design consists of a tall two-sided structure with photovoltaic panels at the top which form a valley type canopy. The materials used in its construction include stainless steel with black laminated PV panels to the front and rear. The telephone would be housed in the centre of the front panel. No indication has been provided as to the precise orientation of the telephone kiosks in each case. As such, the Appeals have been determined with reference to the identified footprint on the appellant's submitted photographs shown in their evidence titled 'Site Highway Analysis'.

Appeal A – 15-17 Long Acre Character and Appearance

15. The call box would be located outside a large retail unit in an area which contains predominantly commercial units. It would be located close to the kerb adjacent to a busy

one-way, single lane, highway. The area outside the retail unit is defined by its large open pavement which contains several pieces of street furniture including an existing kiosk, bins, lamp post and bollards. Despite the presence of street furniture, the area is generally clutter free and has a sense of openness. The call box, as a result of its design, height and width would appear as a substantial structure in the streetscape. Its close proximity to the existing kiosk and bollard would result in an overly dominant and visually intrusive structure and consequently would be harmful to the overall character and appearance of the area.

16. The site is adjacent to the Covent Garden CA which is primarily commercial and retail in character. It is also located nearby to No. 12 -14 Long Acre, a designated listed building (LB). The significance of the CA and the LB derive from the architectural appearance, layout and form of the buildings. Given the urban appearance of the area and the modern and functional form of the call box along with the presence of other modern pieces of street furniture and features within the streetscape, there would be no diminishing effect on the character and appearance of the CA or the setting of the nearby LB. Whilst the setting and significance of the nearby CA and LB would be preserved, the siting and appearance of the call box would have a harmful effect upon the areas character and appearance.

Highway Safety

17. The call box would be located outside a retail unit near to the kerbside of a busy single lane highway. At the time of the site visit, pedestrian traffic was extremely high. It was observed that pedestrian movement around this area was restricted as a result of the existing street furniture. The addition of a call box in this location would further impede the safe and free movement of pedestrians along this section of footpath and given its close proximity to the entrance to the retail unit would also create a pinch point. Accordingly, the call box would be detrimental to highway safety.

Appeal B –142 Long Acre *Character and Appearance*

18. The proposed call box would be located outside a large building which has a number of recessed entrances/exits. It would be sited on a stretch of pavement which is predominately clutter free, albeit there is a waste bin and lighting columns. Given the height and width of the call box, the openness of the area, which positively contributes to the visual aspect of this section of the street, would be undermined. Accordingly, as a result of its siting and appearance, the call box would appear as a dominant structure in an otherwise clutter free streetscape and would, therefore, have a harmful effect upon the character and appearance of the area.
19. The site is adjacent to the Covent Garden CA which is primarily commercial in character. It is also located opposite No. 12 – 14 Long Acre, a designated LB. The significance of the CA and the LB derive from the architectural appearance, layout and form of the buildings. Given the urban character and appearance of the area along with the modern and functional form of the call box, there would be no diminishing effect on the character and appearance of the CA or the setting of the nearby listed building. Whilst the setting and significance of the nearby CA and LB would be preserved, the siting and appearance of the call box would have a harmful effect upon the areas character and appearance.

Highway Safety

20. The proposed call box would be located on a stretch of pavement that is relatively wide and free from street clutter. From observations made at the time of the site visit the street was busy and there were high volumes of pedestrian traffic. Despite the volume of traffic, the call box as a result of its size and overall footprint would unlikely impede the safe and free movement of pedestrians along this section of pavement given its overall width. Accordingly, the proposal would not have a harmful effect on highway safety.

Appeal C – 82 Charing Cross Road - Character and Appearance

21. The proposal would be located outside a large commercial building. The site is located on a stretch of pavement with busy junctions with traffic lights at either end. Within this section of pavement there are several pieces of street furniture including kiosks, trees, bins and street lighting columns. Whilst the pavement is wide and gives the appearance of an expanse of area, due to the number and proliferation of existing pieces of street furniture the area has a cluttered appearance. Despite the proposed siting, in line with the other pieces of street furniture, the addition of the call box in this location would, as a result of its height, width and footprint reduce the visual spacing between the existing street furniture and make the area unacceptably cluttered. As such, the siting and appearance of the proposal would have a harmful effect on character and appearance of this part of the streetscape.
22. The site is nearby to the Soho & Chinatown CA and also the Covent Garden CA. The significance of both CAs are defined by their architectural appearance, layout of building and social history. Whilst the call box would have a modern and functional appearance, its location adjacent to the modern façade of No. 82 Charing Cross, along with the distance from inside the CAs, there would be no diminishing effect on the character and appearance of either CA. The setting and significance of the CAs would, therefore, be preserved. Nonetheless, the siting and appearance of the call box would have a harmful effect upon the character and appearance of the area

Highway Safety

23. From observations made at the time of the site visit, the flow of pedestrian traffic appeared high. Given the relatively short stretch of pavement between the two busy junctions, the existing street furniture and despite the generous width of the pavement, the call box would, as a result of its height and width create a pinch point at this location and impede the free flow of pedestrian traffic. Accordingly, the call box would be detrimental to highway safety.

Conclusion and Recommendation - Appeals A to C

24. Whilst it has been found that there would be no harm to the setting of the respective CA in Appeal A, B, and C, nor harm to the setting of the listed buildings in Appeals A, and B, this does not override the significant harm found as a result of the siting and appearance of each proposed call box on the character and appearance of the areas. In addition to this, in Appeal A and C, the siting and appearance of the proposed call boxes would have a harmful effect on the safe and efficient operation of the highway. Whilst no harm has been found in Appeal B in regard to highway safety, this does not override the adverse visual effect of the proposal upon the character and appearance of the area.

25. For the reasons given above, it is recommended that the Appeals A to C should be dismissed.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision - Appeals A to C

35. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the Appeals A to C should be dismissed.

Chris Preston

INSPECTOR