



Appeal Decision

Site visit made on 22 November 2019

by S Poole BA(Hons) DipArch MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2020

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 (as amended) against refusals to grant approval required under Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) Order (England) 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decisions of the Council of the Royal Borough of Kensington and Chelsea.
 - The development proposed in each case is described on the application forms as a public call box.
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Appeal A, Ref: APP/K5600/W/19/3231626 **39 Old Brompton Road, London SW7 3HZ**

- The application PA/18/07263, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal B, Ref: APP/K5600/W/19/3231631 **7 Harrington Road, London SW7 3ES**

- The application PA/18/07282, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal C, Ref: APP/K5600/W/19/3231633 **97 Cromwell Road, London SW7 4DN**

- The application PA/18/07293, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal D, Ref: APP/K5600/W/19/3231637 **128 Gloucester Road, London SW7 4SF**

- The application PA/18/07210, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal E, Ref: APP/K5600/W/19/3231635 **Adj. 491 Kings Road, London SW10 0TT**

- The application PA/18/07296, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal F, Ref: APP/K5600/W/19/3231639 **536 Kings Road, London SW10 0LD**

- The application PA/18/07267, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Decision

1. Appeals A, B, C, D, E and F are dismissed.

Procedural Matters

2. The appeals relate to proposals for development at 6 sites within the Royal Borough of Kensington and Chelsea. The proposed call boxes would be of identical design and the Council's reasons for refusal are similar. Consequently, whilst I have considered each proposal on its individual merits, I consider it appropriate to issue a single decision covering the 6 appeals.
3. I have used the site addresses given on the application and appeal forms in the banner heading above. In all cases the proposals would be situated within the pavement in front of, or close to, these addresses given.
4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the General Permitted Development Order (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 appeals before me.
5. The appellant is an electronic communications code operator and therefore benefits from deemed planning permission for call boxes that fall within the permitted development rights of Schedule 2, Part 16, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to the prior approval requirements under paragraph A.3. The appellant applied to the Council on that basis and prior approval was refused.
6. The Council's decisions refer to various development plan policies. However, the principle of development is established by the GPDO and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO does not require regard be had to the development plan. The provisions of the GPDO require a proposal of this type to be assessed solely on the basis of its siting and appearance, taking into account any representations received. Nonetheless, I take account of the policies and guidance cited by both parties in so far as they are relevant to matters of siting and appearance.
7. Some of the appeal sites are located close to listed buildings and conservation areas. The National Planning Policy Framework (2019) states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation. Significance can be harmed through alteration of the heritage asset or by development within its setting.
8. The High Court has considered the issue of the inclusion of advertising on public call boxes. Its judgement¹ concluded that the telephone kiosk in

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

question was for the dual purpose of advertisement display and telecommunications use and therefore outside the scope of Schedule 2, Part 16, Class A of the GPDO. I note that on one side the proposals would include non-illuminated glazed display panels measuring about 1.7m by 1.1m. Whilst I recognise that these areas could potentially be used for the display of advertisements, the proposed structures would only take on a dual purpose if advertisement consent were to be granted for the display panels to be used for this purpose. Therefore, based on the information before me and the representations made by both parties, I am satisfied the proposed development falls within the scope of Schedule 2, Part 16, Class A of the GPDO.

Main Issues

9. The main issues are the effects of the siting and appearance of the public call boxes on:
 - (i) the character and appearance of the surrounding area (all appeals) and, linked to that, the settings of heritage assets (appeals B, E and F); and
 - (ii) highway and pedestrian safety (appeals A, B, E and F).

Reasons

Background

10. The proposed public call boxes² would comprise freestanding steel-framed panel-like structures which would be approximately 3.1m in overall height by about 1.3m wide. They would be about 0.23m deep with one side containing the telephone recessed within a black laminated photovoltaic solar panel. The other side would include a non-illuminated glazed display panel measuring about 1.7m by 1.1m. Further solar panels would project above the two faces of the structure to form small canopies.
11. These structures would be largely black and dark grey in colour and, in terms of their arrangement and overall appearance, would be more akin to double-sided advertisement panel structures as opposed to the more traditional style of enclosed telephone kiosks that are prevalent close to many of the appeal sites. Whilst the proposed structures would have smaller footprints than traditional telephone kiosks, I note that they would be significantly wider and taller.
12. The 6 appeal sites have been subject to earlier proposals for the installation of call boxes³. Prior approval was refused by the Council and subsequent appeals dismissed at appeal on 17 October 2019⁴. I note that the proposed call boxes before me differ from those considered by my colleague in terms of their arrangement, design and appearance. However, the current proposals would be similar in width to those previously proposed and therefore create a similar degree of obstruction to passing pedestrians.
13. Given the earlier appeal decisions related to development that is similar in many respects to that before me, my colleague's observations and conclusions are considerations to which I attach substantial weight.

² The "MAX 2" design

³ The "MAX 1" design

⁴ Appeal references APP/K5600/W/18/3212059, 3211994, 3212068, 3212010, 3212063 and 3212074

Appeal A: 39 Old Brompton Road, London SW7 3HZ

14. The proposal would be located in Old Brompton Road within a section of pavement which, apart from a few cycle stands and lamp posts, is notable for an absence of street furniture. In this context, due to its size, siting and appearance, the proposal would be a prominent and incongruous feature that would be at odds with the prevailing open character of this section of pavement and would therefore detract from the character and appearance of the street scene.
15. The proposal would be situated in a relatively busy shopping street close to South Kensington Underground Station. It was clear from my site visit, which was undertaken in the early morning, that the streets close to the station experience high levels of pedestrian activity at peak times due to people approaching and leaving the station and using shops and cafes. Due to its width and siting, the proposal would significantly reduce the amount of footway available for pedestrians to below an acceptable level. This would have a negative and harmful impact on pedestrian safety.
16. For the reasons set out above I therefore conclude that the siting and appearance of this proposal would result in unacceptable harm to the character and appearance of the area and pedestrian safety. This harm justifies the refusal of prior approval and dismissal of this appeal.

Appeal B: 7 Harrington Road, London SW7 3ES

17. This proposal would be located in Harrington Road within a section of pavement which, apart from lamp posts, is notable for an absence of street furniture. In this context, due to its size, siting and appearance, the proposal would be a prominent and incongruous feature that would be at odds with the prevailing open character of this section of pavement and therefore detract from the character and appearance of the street scene.
18. The appeal site is opposite, and therefore forms part of the settings of, the Ampersand Hotel and 17/18 Cromwell Place, both of which are Grade II listed Victorian buildings. For the reasons given above the proposal would also cause harm to these settings. In both cases this would amount to less than substantial harm to the setting and significance of the heritage assets. Whilst paragraph 116 of the National Planning Policy Framework (2019) indicates that, in considering applications like this for prior approval, the need for telecommunications systems should not be questioned, paragraph 196 of the Framework states that less than substantial harm to the significance of designated heritage assets should be weighed against the public benefits of a proposal.
19. The public benefits of a robust telecommunications network are acknowledged. However, there is no compelling case for the proposal on grounds of a specific locational need. For these reasons and when taking account that great weight should be given to the conservation of heritage assets in accordance with the Framework, I do not consider that the public benefits of the proposal outweigh the harm I have found.
20. The proposal would be situated in front of a parade of shops in a busy street close to South Kensington Underground Station. It was clear from my site visit, which was undertaken in the early morning, that the streets close to the

station experience high levels of pedestrian activity at peak times due to people approaching and leaving the station and using shops and cafes. Due to its width, the proposal would significantly reduce the amount of footway available for pedestrians to below an acceptable level. This would have a negative and harmful impact on pedestrian safety.

21. For the reasons set out above I therefore conclude that the siting and appearance of this proposal would result in unacceptable harm to the character and appearance of the area, the settings of nearby listed buildings and pedestrian safety. This harm justifies the refusal of prior approval and dismissal of this appeal.

Appeal C: 97 Cromwell Road, London SW7 4DN

22. The appeal site is within a wide area of pavement in front of the Holiday Inn Hotel. The section of pavement immediately next to the road includes 2 telephone kiosks, a bus shelter, lamp posts, mature trees and a recently installed digital display structure. It therefore has a cluttered appearance which detracts from the street scheme.
23. The proposal would be situated between an existing kiosk and the display structure therefore adding to the density of street furniture cluttering this section of the pavement. Due to its siting and appearance I therefore conclude that this proposal would have a detrimental impact on the street scene and would harm the character and the appearance of the area. This harm justifies the refusal of prior approval and dismissal of this appeal.

Appeal D: 128 Gloucester Road London SW7 4SF

24. The appeal site is within a relatively wide and busy section of pavement close to the entrances to the Gloucester Arcade and the Gloucester Road Underground Station. This area includes a telephone kiosk, a public toilet structure, a retail kiosk, lamp posts, a bench, cycle stands, utility boxes and freestanding temporary advertisement boards. It therefore has a notably cluttered appearance which detracts from the street scheme.
25. The application drawings suggest the proposal would be situated close to the bench, which is between the telephone kiosk and the public toilet. As such, due to its siting and appearance, the proposal would add further clutter to an already cluttered portion of pavement. I therefore conclude that this proposal would have a detrimental impact on the street scene and would harm the character and the appearance of the area. This harm justifies the refusal of prior approval and dismissal of this appeal.

Appeal E: Adj. 491 Kings Road, London SW10 0TT and Appeal F: 536 Kings Road, London SW10 0LD

26. The sites for appeals E and F are close to each other on opposite sides of the Kings Road. This section of the road is primarily bounded by blocks of flats set behind boxed hedges. The street is also notable for the mature street trees and the general absence of street furniture, albeit there is a telephone kiosk in close vicinity to the site of appeal E and some benches, which are set into the boundary walls and are a positive feature of the street scene. Whilst this portion of the Kings Road is heavily trafficked, the greenery, the quality of some of buildings and absence of commercial uses results in a relatively visually pleasing environment.

27. The proposed call box in respect of appeal E would be located close to the existing telephone kiosk at the back edge of the pavement next to the hedge. Due to its siting and appearance, the proposal would add a second incongruous element of street furniture to this otherwise uncluttered and pleasant section of street, further eroding the current openness of the streetscape.
28. In respect of appeal F, the proposal would be located close to the road in a portion of pavement that is totally devoid of any clutter. In this context, due to its size, siting and appearance, the proposal would be a prominent and incongruous feature that would be at odds with the prevailing open character of this section of pavement and therefore detract from the character and appearance of the street scene.
29. Both appeal sites are located close to the Sloane/Stanley Conservation Area. I am satisfied that the setting and significance of the Conservation Area would be adequately preserved. This does not however outweigh the harm identified above.
30. In considering the earlier proposals for call boxes in these two locations my colleague was of the view that they would obstruct and interfere with the free movement of pedestrians to the detriment of highway safety. As the proposals before me would be of similar width to those previously proposed, and there have been no changes to the physical characteristics of these sections of pavement, I find no reasons to diverge from my colleague's conclusions on this matter.
31. For the reasons set out above I therefore conclude that the siting and appearance of these proposals would result in unacceptable harm to the character and appearance of the area and pedestrian safety. This harm justifies the refusal of prior approval and dismissal of appeals E and F.

Other matters

32. The appellant has referred to a number of appeal decisions in support of the appeals. However, as each appeal relating to prior approval of a proposed call box is necessarily assessed on its individual merits having regard to its particular siting, context and circumstances, I attach limited weight to the appeal decisions referred to.

Conclusion

33. For the reasons set out above, and having regard to all other matters raised, I conclude that appeals A, B, C, D, E and F should fail.

S Poole

INSPECTOR