



Appeal Decision

Site visit made on 13 January 2020

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2020

Appeal Ref: APP/K5600/W/19/3231593

Pavement outside 101 Fulham Road, London SW3 6RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application, Ref. PA/18/07196, dated 7 November 2018 was refused by notice dated 28 December 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The appeal concerns a proposal for the installation of a public call box of the same design as many others in the appellant's current roll out programme. It is referred to as 'Max 2' and illustrated on the application drawing 'MAX 2 ASSEMBLY REV.C' dated 6 September 2018.
3. The appellant is a licenced electronic communications code operator and as such benefits from deemed planning permission for the proposed public call boxes erected as communications apparatus falling 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. Following the appellant's application to the Council under these provisions it was determined that prior approval was required for the siting and appearance of the communication apparatus.
4. On 25 May 2019, the GPDO was amended through the coming into force of the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019. This amendment has had the effect of removing permitted development rights to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, Part 5 of the 2019 Regulations provides that where an appeal has been made within six 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 of the GPDO 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 position in respect of the appeal in this decision letter.

5. The Council's Notice of Refusal refers to the proposed telephone kiosk / public call box as being likely to restrict pedestrian movement by unacceptably reducing the width of the pavement and forming an obtrusive addition to existing street clutter, thereby harming the street scene. In addition, the Notice states that *'the application for prior approval does not fall within the ambit of Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as it is not considered to be for the purpose of the electronic operator's communication network and it is not required for those purposes'*.
6. On 5 February 2019, between the Council's refusal and the lodging of this appeal, the decision of the Court in respect of *Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)* concerning prior approval for telephone call box development was issued. This has been the subject of representations in this appeal including the appellant's attachment of Counsel's opinion. Amongst other matters, the Westminster judgement confirms that the assessment as to whether a telecommunications apparatus falls within the scope of Part 16, Class A of the GPDO should be made before matters pertaining to the siting and / or appearance are considered.^[1]_{SEP}

Main Issue

7. Having regard to paragraphs 5 and 6 above, it follows that the main issue in these appeals is whether or not the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

8. As mentioned in paragraph 2 above, the appeal concerns the installation of a 'Max 2' public call box of the same design as others in the appellant's roll out programme. In the light of the Westminster judgement, the aforementioned Counsel's opinion examines the implications, if any, of this judgement specifically in relation to the Max 2 public call box.
9. The opinion argues that there are material differences between the New World call boxes in the Westminster case and the Max 2. In respect of the former it says *'The proposed development included an advertising panel and an inbuilt facility to illuminate and to display advertisements. These features were 'not there at all for the telecommunications function'. By clear contrast, none of the Maximus appeal cases include any advertising features. All the design elements of the public call boxes proposed by Maximus form part of the telecommunications function..... . The proposed development includes no elements that are there for the purposes of advertising..... . Accordingly, the conclusion of a dual purpose in the New World case can have no application to the facts in the Maximus cases'*.
10. In my appraisal of the appellant's evidence for all the appeals in this decision letter I have carefully examined the application plans for the Max 2 call boxes. On the application's drawing entitled 'MAX 2 ASSEMBLY Rev. C' and dated 06.09.2018, within the Inset box the front and rear of the proposed call box unit are identified in Isometric View at scale 1:30. The main part of the drawing, at the slightly larger scale of 1:25, shows the details of each of these elevations. Of particular relevance is that the rear of the unit is identified as a *'Non-illuminated display panel'*, whilst there is an additional reference to a *'Visual Area'* with a width of 1100mm and a height of 1700mm. I consider that

this information confirms that in addition to the rear panel being used to access the internal equipment of the call box for the purpose of maintenance, there is an inbuilt facility that could be used for display purposes without any further modifications to the structure.

11. This inherent element of the Max 2 call box design requires assessment in the light of the Westminster judgement. Paragraph 37 begins '*In my view 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*'. In paragraph 39 the judgement says: '*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*'. The paragraph concludes: '*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.*'
12. Applying the Court's interpretation of the GPDO to the detailed design of the Max 2 call box, I consider on the main issue that it is reasonable to conclude that the proposal is not solely for the purpose of the operator's electronic communications network and that accordingly it falls outside Schedule 2, Part 16, Class A of the GPDO. For this reason the appeal must fail and the further matters of the siting and appearance of the public call box the appeal do not fall to be considered.
13. For the above reasons and having had regard to all other matters raised the appeal is dismissed.

Martin Andrews

INSPECTOR