



Appeal Decisions

Site visit made on 18 November 2019

by Conor Rafferty LLB (Hons), AIEMA, Solicitor (Non-practising)

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2020

Appeal A Ref: APP/A5840/W/19/3228264

Public Highway, 27 Peckham Road, London, SE5 8UH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under an Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (general Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Southwark Council.
 - The application Ref 18/AP/3183 dated 1 October 2018, was refused by notice dated 12 November 2018.
 - The development proposed is a public call box.
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Appeal B Ref: APP/A5840/W/19/3228170

Public Highway, Camberwell Road adjacent Lamb House, London, SE5 7JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under an Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (general Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Southwark Council.
 - The application Ref 18/AP/3153 dated 1 October 2018, was refused by notice dated 8 November 2018.
 - The development proposed is a public call box.
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Appeal C Ref: APP/A5840/W/19/3228172

Public Highway, Camberwell Road adjacent Burgess Park west entrance, London, SE5 0EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under an Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (general Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Southwark Council.
 - The application Ref 18/AP/3174 dated 1 October 2018, was refused by notice dated 8 November 2018.
 - The development proposed is a public call box.
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Appeal D Ref: APP/A5840/W/19/3228176

Public Highway, 236 Camberwell Road adjacent Bishops Mead, London, SE5 0ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under an Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (general Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Southwark Council.
 - The application Ref 18/AP/3177 dated 1 October 2018, was refused by notice dated 8 November 2018.
 - The development proposed is a public call box.
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Appeal E Ref: APP/A5840/W/19/3228180

Public Highway, Bowyer Place adjacent Milton House near junction with Camberwell Road

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under an Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (general Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of Southwark Council.
 - The application Ref 18/AP/3166 dated 1 October 2018, was refused by notice dated 8 November 2018.
 - The development proposed is a public call box.
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Decisions

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

Appeal Procedure

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

3. As set out above, there are five separate appeals 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) Order 2015 (the GPDO). Whilst each appeal relates to a different site, the proposed kiosks 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.
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 appeals before me.

5. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed telephone kiosk under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) of the Town and Country Planning (General Permitted Development) Order 2015, subject to prior approval by the local planning authority of siting and appearance.
6. 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.
7. The High Court has considered the issue of the inclusion of advertising on public call boxes. A recent judgement in the Westminster 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 kiosk 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. 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 black photovoltaic glass to maximise the energy generating potential. LED lighting strips on the outside edges of the call box are included for safety purposes.
10. It is apparent that the form and design of the proposed telecommunications apparatus in these appeals is driven by the proposed functionality as public call boxes. There is no evidence to suggest that the proposed developments include 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.

Planning Policy

11. 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 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 only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issues

12. The main issues are:

- i) The effect of the siting and appearance of the proposed kiosk on the character and appearance of the surrounding area (All Appeals)
- ii) The safe and efficient operation of the highway network in the vicinity of the proposal (Appeal A); and
- iii) The effect of the proposal on the setting of a nearby Listed Building (Appeal B; Appeal C)

Reasons for the Recommendation

All Appeals

13.

Appeal A

Character and appearance

- 14. The proposal would be located on Peckham Road, close to the junction with St Giles Road. While the immediate surrounding area is predominantly made up of traditional red brick dwellings, the more modern Sunshine House NHS building dominates the stretch of Peckham Road along which the proposal would be situated. Similarly, although the footpaths in the area are relatively wide and largely unobstructed, various elements of street furniture are located close to the appeal site, including road signage, bins, bicycle parking facilities, lampposts and railings. A bus stop and traffic lights also present nearby.
- 15. Despite the overarching traditional character of the area, the proposal would be situated directly in front of the modern Sunshine House building and would primarily be experienced in this context. As such, it would not appear as an incongruous addition to the streetscene by nature of its contemporary appearance. Nonetheless the call box would be sited along a section of street with several existing pieces of street furniture. While aligned with the other elements present, 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 appear unacceptably cluttered. This sense of clutter is heightened when compared with the stretch of footpath directly opposite the appeal site, which is relatively free from street furniture and would contrast starkly with the area outside Sunshine House once the proposal was in place.
- 16. For the reasons set out above I find that the proposal would, by reason of its siting, have a harmful effect on the character and appearance of this part of the streetscape. As such, it would conflict with Policies 7.4 and 7.6 of the London Plan 2016; Strategic Policy 12 of the Southwark Council Core Strategy 2011, and Policies 3.12 and 3.13 of The Southwark Plan 2007.

Highway Safety

- 17. The proposal would be located on a footpath that is likely to be relatively well used by pedestrians, given the presence of both nearby residential premises and the entrance to the Sunshine House NHS building close to the appeal site.

18. The appellant has stated that the proposal complies with the Transport For London Pedestrian Comfort Guidance 2010 and the Transport for London Streetscape Guidance 2017 in terms of the overall footway width and the footway clear zone when taking into account the proposal. However, Transport for London has stated that the clear width of footway remaining after installation would be below the minimum for an active street. Acknowledging the representations of both parties it is nonetheless clear that the proposal represents a significant addition to the footpath.
19. According to submitted plans the proposal would have a width of 1.3 metres. This would introduce a wide obstacle to the footpath along with the street furniture already present and as such would greatly reduce the pavement width in its immediate area. This, in turn, would diminish the area for pedestrians and create a narrow useable corridor along the footpath.
20. The Council has also raised concerns about the impact of the proposal on driver visibility. The call box would be situated in a location where drivers would need to take more care due the corner junction with St Giles Road. For cyclists exiting onto Peckham Road at this junction, they will be entering higher speed traffic on a main road. Drivers and cyclists travelling along Peckham Road passing by the appeal site need to be aware of the various movements to and from St Giles Road, and the changing traffic lights nearby.
21. All of these categories of drivers and cyclists would have a clear view of the proposal. Due to the proposed location the call box close to the edge of the footpath and in proximity to the junction and nearby traffic lights it has the potential to adversely affect the visibility of other traffic or pedestrians at this location. This could therefore reduce highway safety in the vicinity and cause an increase in collision risk.
22. I find that the proposal would have an unacceptably adverse effect on driver visibility and pedestrian permeability in what has the potential to be a busy area. Accordingly it would be detrimental to the safe and efficient operation of the highway and would be contrary to Policies 6.3, 6.10 and 7.5 of the London Plan 2016 and Policies 3.11, 5.2 and 5.3 of The Southwark Plan 2007.

Appeal B

23. The proposal would be located on Camberwell Road, in front of the low rise Lamb House flats. It is also situated diagonally across the street from the Lighthouse Cinema Grade II Listed Building at 262 Camberwell Road. The immediate surrounding area is made up of a mix of residential and commercial premises of varying styles and character. In addition to a row of trees, various elements of street furniture are located along the stretch of footpath where the proposal would be located, to include bins, railings, lampposts and road signage. A disused hut structure and modern call box similar in style to the proposal are also present in proximity to the appeal site.
24. While acknowledging the other call box near the site, the proposal, by nature of its location directly in front of the low rise flats, would appear as an overtly modern structure on the immediate streetscape, representing an incongruous addition to the footpath and detracting from the character

of these flats. Additionally, the call box would be sited along a section of street with several existing pieces of street furniture and the hut structure. While aligned with the other elements present, 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 immediate area appear unacceptably cluttered.

25. Furthermore, from certain vantage points the proposal would be experienced alongside the Grade II Listed Building opposite. In such a dense urban context the streetscape provides overlapping settings but the red brick, art deco style of the Listed Building in a prominent corner plot location is a dominating feature of this section of Camberwell Road. This setting highlights and contributes to both its visual and historic significance. Despite the already mixed urban setting, the contemporary design of the proposal would further detract from the historic and visual significance of the building and as such would have a negative effect on the setting of this Listed Building.
26. Whilst the level of harm caused would be less than substantial it is, nevertheless, to be given considerable importance and weight. This harm has been weighed against the number of public benefits purported by the appellant, to include the provision of call box functions for the public, a beneficial level of coverage and the filling of gaps in the existing network. It has also been weighed against the provisions of the National Planning Policy Framework (the NPPF) which encourage electronic communications. However, the benefits of a single call box in those respects are modest and I attach a modest amount of weight accordingly. I am not satisfied that they are sufficient to outweigh the harm to the setting of the listed building which is a matter to which I attach substantial weight. Moreover, no compelling case has been presented to indicate that the same benefits could not be achieved by siting the apparatus in a location that would not harm the setting of the listed building.
27. For the reasons set out above I find that the proposal would, by reason of its siting and appearance, have a harmful appearance on the character and appearance of this part of the streetscape, and would cause harm to the setting of the Grade II Listed Building at 262 Camberwell Road. As such, it would conflict with Policies 7.4, 7.6 and 7.8 of the London Plan 2016; Strategic Policy 12 of the Southwark Council Core Strategy 2011, and Policies 3.12, 3.13 and 3.18 of The Southwark Plan 2007.

Appeal C

28. The proposal would be located on Camberwell Road, in proximity to the entrance to Burgess Park. It is also situated directly across the street from the Grade II Listed Building at 66 – 92 Camberwell Road. The immediate area is characterised by Burgess Park and the surrounding buildings which are primarily traditional in character, albeit with certain modern additions to the streetscape nearby such as commercial premises. A row of trees and several elements of street furniture are located along the stretch of footpath where the proposal would be located, to include a bench, bins, railings, lampposts and road signage.
29. The proposal would be located adjacent to a bench present on the footpath. The modern style of this bench would complement the

contemporary appearance of the proposal, such that the call box would not appear as an incongruous addition to the streetscape. However, several existing pieces of street furniture are already present along the footpath. While aligned with the other elements present, 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 appear unacceptably cluttered.

30. Furthermore, from certain vantage points the proposal would be experienced alongside the Grade II Listed Building opposite. Despite the urban setting, the row of terraced houses at 66 – 92 Camberwell Road retain a historic character and traditional style, and its setting opposite the visible green space of Burgess Park contributes positively to the visual significance of the building. The addition of another contemporary structure in this location such as the proposal would further detract from the historic and visual significance of the building and as such would have a negative effect on the setting of this Listed Building.
31. Whilst the level of harm caused would be less than substantial it is, nevertheless, to be given considerable importance and weight. This harm has been weighed against the number of public benefits purported by the appellant, to include the provision of call box functions for the public, a beneficial level of coverage and the filling of gaps in the existing network. It has also been weighed against the provisions of the National Planning Policy Framework (the NPPF) which encourage electronic communications. However, the benefits of a single call box in those respects are modest and I attach a modest amount of weight accordingly. I am not satisfied that they are sufficient to outweigh the harm to the setting of the listed building which is a matter to which I attach substantial weight. Moreover, no compelling case has been presented to indicate that the same benefits could not be achieved by siting the apparatus in a location that would not harm the setting of the listed building.
32. For the reasons set out above I find that the proposal would, by reason of its siting and appearance, have a harmful appearance on the character and appearance of this part of the streetscape, and would cause harm to the setting of the Grade II Listed Building at 66 - 92 Camberwell Road. As such, it would conflict with Policies 7.4, 7.6 and 7.8 of the London Plan 2016; Strategic Policy 12 of the Southwark Council Core Strategy 2011, and Policies 3.12, 3.13 and 3.18 of The Southwark Plan 2007.

Other matters

33. An interested party has raised concerns that a nearby kiosk has increased anti-social behaviour and facilitated illegal activity, and that the proposal could lead to similar issues in this location. However, this evidence is to some extent anecdotal. No firm evidence has been submitted that the proposal would be likely to materially increase the risk of, or fear of, crime and as such limited weight is attached to this argument.
34. The interested party has also argued that there is no need for a call box at the proposed location, however the issue of need is not to be examined in the context of this appeal.

Appeal D

35. The proposal would be located on Camberwell Road. The immediate area is characterised by a mixture of commercial and residential uses. The stretch of footpath along which the proposal would be located is situated in front of is lined with residential apartment buildings of varying styles, with numerous elements of street furniture present. This includes a free standing advertisement, a bin, lampposts and an older style public call box.
36. While acknowledging the varying styles of residential buildings in proximity to the site, the proposal would nonetheless appear as an overtly modern structure on the immediate streetscape, representing an incongruous addition to the footpath. Its contemporary style is heightened when experienced alongside the low rise flats present in the area and the older style public call box in close proximity. Additionally, the call box would be sited along a section of street with few pieces of street furniture, which are regularly spaced out along the footpath. While aligned with the other elements present, the addition of the proposal in this location adjacent to the other call box would, as a result of its height, width and footprint reduce the visual spacing between the existing street furniture and make the immediate area appear unacceptably cluttered. This would be at odds with the spacious, open and relatively uncluttered feel of the immediate surrounds.
37. For the reasons set out above I find that the proposal would, by reason of its siting and appearance, have a harmful effect on the character and appearance of this part of the streetscape. As such, it would conflict with Policies 7.4 and 7.6 of the London Plan 2016; Strategic Policy 12 of the Southwark Council Core Strategy 2011, and Policies 3.12 and 3.13 of The Southwark Plan 2007.

Appeal E

38. The proposal would be located on Bowyer Place, close to the junction with Camberwell Road. The immediate area is characterised by its residential nature, with numerous apartment buildings of varying styles located along Bowyer Place. The footpaths in the vicinity are relatively wide and generally free from clutter. The stretch of pavement along which the proposal would be located reflects this character, with generous spacing provided between the lampposts present on the footpath.
39. While acknowledging the varying styles of residential buildings in proximity to the site, the proposal would nonetheless appear as an overtly modern structure on the immediate streetscape, representing an incongruous addition to the footpath. Its contemporary style is heightened when experienced alongside the low rise flats present in the area. Additionally, the call box would be sited along a section of street with few pieces of street furniture, which are regularly spaced out along the footpath. While aligned with the other elements present, the addition of the call box in this location adjacent to the lamppost would, as a result of its height, width and footprint reduce the visual spacing between the existing street furniture and make the immediate area appear unacceptably cluttered. This would be at odds with the spacious, open and relatively uncluttered feel of the immediate surrounds.

40. For the reasons set out above I find that the proposal would, by reason of its siting and appearance, have a harmful effect on the character and appearance of this part of the streetscape. As such, it would conflict with Policies 7.4 and 7.6 of the London Plan 2016; Strategic Policy 12 of the Southwark Council Core Strategy 2011, and Policies 3.12 and 3.13 of The Southwark Plan 2007.

Other considerations (All Appeals)

41. The appellant has referred to several appeal decisions regarding similar proposals for the installation of telephone kiosks. However, I have considered each proposal before me on its own individual merits and the specific circumstances and context of each case

Overall conclusions

42. Having had regard to all matters raised, I recommend that the above appeals should be dismissed.

C Rafferty

APPEAL PLANNING OFFICER

Inspector's Decision

43. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis I agree that all of the appeals should be dismissed.

C Preston

INSPECTOR