
Appeal Decisions

Site visits made on 5 November 2019 by C McDonagh BA (Hons), MA

by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2020

All appeals

- The appeals are 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeals are made by Maximus Networks Ltd against the decisions of the Council of the London Borough of Tower Hamlets.
 - The development proposed in each case is the installation of a telephone kiosk.
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Appeal A - Ref: APP/E5900/W/19/3231295

Public Highway, 268 Bethnal Green Road, London, E2 0AG

Grid Reference Easting: 534269 and Grid Reference Northing: 182590

- The application Ref: PA/18/03181, dated 7 November 2018, was refused by notice dated 14 December 2018.
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Appeal B - Ref: APP/E5900/W/19/3231324

Public Highway, 255-279 Cambridge Heath Road, London, E2 0HG

Grid Reference Easting: 534986 and Grid Reference Northing: 182644

- The application Ref: PA/18/03191, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal C - Ref: APP/E5900/W/19/ 3231292

Public Highway, 249 Cambridge Heath Road, London, E2 0EL

Grid Reference Easting: 535009 and Grid Reference Northing: 182538

- The application Ref: PA/18/03188, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal D - Ref: APP/E5900/W/19/3231330

Public Highway, Butcher Row near junction Cable Street, London, E1W 3HJ

Grid Reference Easting: 535945 and Grid Reference Northing: 180949

- The application Ref: PA/18/03182, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal E - Ref: APP/E5900/W/19/3230874

Public Highway, The Highway adjacent Atlantic Wharf, London, E1W 3WB

Grid Reference Easting: 535817 and Grid Reference Northing: 180848

- The application Ref: PA/18/03179, dated 7 November 2018, was refused by notice dated 14 December 2018.
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Appeal F - Ref: APP/E5900/W/19/3230866

Public Highway, adjacent 102 The Highway E1W 2BU

Grid Reference Easting: 534662 and Grid Reference Northing: 180710

- The application Ref: PA/18/03161, dated 7 November 2018, was refused by notice dated 14 December 2018.
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Appeal G - Ref: APP/E5900/W/19/3231338

Public Highway, Burdett Road adjacent Leybourne House, London, E14 7ED

Grid Reference Easting: 536962 and Grid Reference Northing: 181208

- The application Ref: PA/18/03184, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal H - Ref: APP/E5900/W/19/3231332

Public Highway, West India Dock Road near junction Pennyfields, London, E14 8HD

Grid Reference Easting: 537168 and Grid Reference Northing: 180780

- The application Ref: PA/18/03171, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal I - Ref: APP/E5900/W/19/3231336

Public Highway, West India Dock Road corner Westferry Road, London, E14 8AB

Grid Reference Easting: 537098 and Grid Reference Northing: 180785

- The application Ref: PA/18/03176, dated 7 November 2018, was refused by notice dated 21 December 2018.
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Appeal J - Ref: APP/E5900/W/19/3231187

Public Highway, adjacent 70 Marsh Wall, London, E14 9SL

Grid Reference Easting: 537658 and Grid Reference Northing: 179794

- The application Ref: PA/18/03155, dated 7 November 2018, was refused by notice dated 19 December 2018.
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Decisions

1. Appeals A-J are dismissed.

Procedural Matters and Background

2. The application forms relating to appeals A-J describe the proposed development as a 'public call box'. Notwithstanding this, I note that the appellant refers to telephone kiosks in the relevant statements provided while the Council refer to the installations as both a 'Public Call Box' and 'Public Call Box with Solar Panels' in their decision notices. Taking all of this into account, 'installation of a telephone kiosk' more appropriately describes the proposed development, and, as such, is the description used in the banner heading above. Accordingly, I refer to telephone kiosks in the consideration of each appeal below.

3. The appeals relate to proposals by Maximus Networks Ltd for the installation of a telephone kiosk at 10 sites in London across the Borough of Tower Hamlets. The proposed apparatus is identical in each case. Therefore, in the interests of conciseness, I have dealt with all the appeal decisions in the same letter.
4. Whilst the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator, this is subject to transitional and saving provisions. Therefore, for the purposes of these appeals, which were validly made, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO, which refers to development 'by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network'.
5. The proposals before me were refused by the Council on grounds relating to siting and appearance. However, the *Westminster*¹ judgement found that 'the judgement as to whether the kiosk, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered' (paragraph 46). Whilst the Council determined the applications before the *Westminster* judgement was handed down, I note both the appellant and Council have referenced this judgement within their respective statements of case as to its effect on the bearing of the judgement upon the appeals. I have taken these comments into account in determining these appeals.
6. 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'.
7. Whether or not the proposed kiosks are solely for the purpose of the operator's electronic communications network seems to be a matter of dispute between the main parties. The design of each of the proposed kiosks is the same, comprising a freestanding steel-framed kiosk, constructed with steel casings and toughened glass, with roof-mounted solar panels on top of each side which double as a canopy. They would be approximately 3.1m high, with a footprint of around 0.219m length by 1.325m width. All would comprise a two-sided structure of black appearance. While the orientation of the kiosks is not clear from the plans, one side contains the phone itself set in a recess while the other has a non-illuminated glass panel. Whilst deemed consent allows a non-illuminated advertisement on the glazed surface of one face of the kiosk, in these appeals, only the construction of the kiosks is being considered, and the

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

appellant is not seeking advertisement consent. There is nothing within the evidence before me to indicate that the kiosks explicitly contain provision of advertisement space. The above factors, together, lead me to find that these appeal proposals should not be considered to constitute a dual purpose. Therefore, the prior approval considerations of siting and appearance must be considered.

8. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed developments solely on the basis of their siting and appearance, taking into account any representations received. My determination of these appeals has been made on the same basis.
9. The Council has made reference in its decision notices to Policies 6.9, 6.10, 7.4, 7.5 and 7.8 of The London Plan (TLP), Policies SP9, SP10 and SP12 of the Tower Hamlets Core Strategy Development Plan Document (CS), Policies DM20, DM23, DM24, DM25 and DM27 of the Managing Development Document Development Plan Document (DPD) as well as the National Planning Policy Framework (the Framework) and Transport for London's (TfL) Streetscape Guidance (SG). As well as the above, the appellant has referred to the Pedestrian Comfort Guidance for London (PCG), also published by Transport for London.
10. However, applications for prior approval are determined in relation to the criteria set out within the GPDO and, as such, do not require regard to be had to the Development Plan. Nonetheless, although not determinative, I take account of the above-mentioned policies and documents in so far as they are relevant to matters of siting and appearance.

Main Issues

11. The main issues are as follows:

- Whether or not approval should be given in respect of the siting and appearance of the proposed developments, with particular regard to their effect on the character and appearance of the area including, where applicable, the setting of a Conservation Area and/or Listed Building;
- Whether or not approval should be given in respect of the siting and appearance of the proposed developments, with particular regard to their effect on the safe and efficient operation of the highway.

Reasons

Appeal A - Public Highway, 268 Bethnal Green Road

12. The appeal site is located on an area of pavement adjacent to a row of mixed-use buildings, comprising retail units at ground floor level and residential use above. The footway was devoid of street furniture in the vicinity save for a tree on the corner of Bethnal Green Road (A1209) and Buckfast Street, although many of the shops close to the development site had small temporary free-standing signs on the footway.

13. During the site visit, I observed a large amount of vehicular traffic and a heavy flow of footfall, especially from those visiting the market stalls in operation that day, and shops along the street. Although the appearance of the kiosk is typical of its function, the addition of a structure of this scale, especially in terms of its overall height, would add significant visual intrusion in a rare portion of this street that has an element of space. The appellant contends the model proposed is a new version which features a reduced footprint, but its height including the canopy created by the solar panels extends to a maximum of 3.1m. The intrusion created by the kiosk, although simple in design and form, would therefore harm the character and appearance of the area.
14. Further regard is had to the effect of the kiosk on the safe and efficient operation of the public highway. The location of the kiosk to the front section of footway next to the road would narrow the available space for the free flow of pedestrians. A dashboard style analysis has been submitted for all appeal locations to demonstrate the proposal does not conflict with the safe and efficient operation of the highway. Minimum width standards are referred to from the Streetscape Guidance produced by TfL (SG) and it is asserted the kiosk would not compromise pedestrian intervisibility or safety.
15. Nonetheless, it is noted that the above analysis also assesses the existing footway width as narrower than that recommended by the TfL's Pedestrian Comfort Guidance (PCG), which categorises the requirements based on level of pedestrian flow and existing obstacles. The level of flow is determined to be high, which would accord with my observations. Adding additional mass to the footway, which is already below the minimum advisable width, would exacerbate issues during busy periods. The position of the kiosk close to the road would likely mean pedestrians would not be safely able to navigate to the front of the footway given its proximity to the road. As such the flow of people using this path would use the reduced width between the kiosk and wall. Taking the above together, I find that the proposal would have an unacceptably adverse effect on pedestrian permeability.
16. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and be detrimental to the safe and efficient operation of the highway. This harm justifies the refusal of prior approval and the dismissal of appeal A.

Appeal B - Public Highway, 255-279 Cambridge Heath Road

17. The appeal site is located to the front of the footway lining Cambridge Heath Road (A107), between two mature trees and adjacent to an office building. Other than the two trees, the footway also includes railings, litter bins, a pedestrian crossing point and an existing fixed, free-standing digital advertisement board. The proposed location is adjacent to, but not situated within, the Bethnal Green Conservation Area, while several Listed Buildings are located nearby.
18. The appeal site is located in a busy public thoroughfare, and I observed on the site visit how busy both the road and pedestrian traffic can become. The site is opposite Bethnal Green Gardens, a tranquil and relaxing space designated as a Conservation Area. However, the immediate vicinity around the development

site is characterised by the busy road and footpath in what is largely a commercial area. While simple in form and design, the addition of the kiosk in this location would not sit comfortably when compared to existing street furniture given its height and would add to an already cluttered footway, harming the character and appearance of the area as a result.

19. However, the development site is distinctly separated from the Conservation Area by the A107 and would preserve its character and appearance. The Listed Buildings are visible from the appeal site, but it is considered these are a sufficient distance from the proposed kiosk with other street paraphernalia located between the two sites which would negate any impact. As such, the development would preserve the significance of all heritage assets, in accordance with the Framework.
20. Turning to matters of the public highway, the location of the kiosk to the front section of footway next to the road would narrow the available space for the free flow of pedestrians. However, the submitted dashboard analysis shows the kiosk would be 4m+ from the wall of the office building, therefore meeting the recommended distance as advised by the SG and PCG and from my observations on the site visit, it would be unlikely to impact upon pedestrian movement. The kiosk appears to be orientated towards oncoming traffic approaching a well-used stop. However, it would be located amongst a line of other street furniture, including the aforementioned advertisement board and would be unlikely to cause harm to highway safety.
21. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the streetscene but not detrimental to the safe and efficient operation of the public highway. This harm justifies the refusal of prior approval and the dismissal of appeal B.

Appeal C - Public Highway, 249 Cambridge Heath Road

22. The appeal site is located on the footway outside a large retail and residential building on the edge of the path positioned between a lamppost and a large, mature tree. The front of the footway in this location contains a proliferation of street furniture, with a row of cycle racks, litter bin, information column, lampposts, a road sign and trees lining the outer edge of the path as it meets the A107. The site is also adjacent to, but not within, the BGCA.
23. The tree lined footways on both sides of the road have seen a number of street items installed. The linear form of these items in this location has caused a barrier of sorts, with the proposed location of the kiosk the last remaining gap to the front of the footway. The size of the structure is much larger than the existing street elements and although it is simple in design and form, it would not sit comfortably in this location given its height. It would therefore cause harm to the character and appearance of the streetscene due to increased clutter and significant size. Despite this, due to its distinct separation from the BGCA, it would preserve the character and appearance, meeting the guidance of the Framework in this regard.
24. The kiosk would be located towards the front of the footway, with a small offset to allow some clearance to the road. The siting of the kiosk in this location amongst the line of other street paraphernalia would not cause any adverse

impacts to pedestrian permeability and there would remain a comfortable area within recommended guidelines as advised by the SG and PCG.

25. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the streetscene. This harm justifies the refusal of prior approval and the dismissal of appeal C.

Appeal D - Public Highway, Butcher Row near junction Cable Street

26. The appeal site is located towards the centre of the footway running between a cement mixing plant and the Butcher Row road. The path contains a large amount of existing street furniture, including large mature trees, cycle racks, litter bins, pedestrian and road signage, a pedestrian crossing and bollards. A small car park is also present at the junction with Cable Street.
27. The path is wide but narrows at the site of the proposed kiosk due to the protrusion of the boundary fence of the cement plant as it approaches an entrance to the site. The immediate area is already cluttered due to the many bicycles and cars parked as well as the other aforementioned street furniture. The addition of another structure, albeit simple in design and form, especially one of this height in amongst these objects would further exacerbate this cluttered feel of the footpath, harming the character and appearance of the area.
28. The kiosk would be located in a location busy with road traffic, although I noted low levels of pedestrian movements on the site visit. That being said, the kiosk would be in an inconvenient location for pedestrians given it is near the middle of the footway and cause users of the footway to move around it, harming the efficient operation of the pedestrian highway.
29. Further consideration is had to the effect of the kiosk on road users. The location of the proposal is close to the junction of two busy roads and the entrance to the cement plant. I witnessed on the site visit the difficulty in large cement mixing vehicles egressing the site into traffic. The presence of such a large structure has the potential to hinder visibility for motorists at this busy location causing a detriment to highway safety.
30. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. It would also be detrimental to the safe and efficient operation of the public highway. This harm justifies the refusal of prior approval and the dismissal of appeal D.

Appeal E - Public Highway, The Highway adjacent Atlantic Wharf

31. The appeal site is located outside a large residential building on the front edge of the footway along the road known as The Highway. The kiosk would be located between a post box towards the back of the path and a lighting column to the front. Other street furniture includes an electrical box and road sign.
32. I recognise that the style of the kiosk would be plain and simple. However, the addition of the mass of the proposed kiosk would, together with the aforementioned elements, cumulatively result in an increasingly cluttered appearance to the pavement and the wider streetscene. As such, the kiosk would harm the character and appearance of the streetscene.

33. Given the narrow profile of the footway in this location, when combined with the lighting column and entrance canopy of the building, the kiosk extending into the footpath via its width would create a further narrowing of the footway to users of the path. While the distance to be retained between the kiosk and wall of the building may meet minimum standards as advised in the documents by TfL, the submitted analysis does not factor in existing street elements.
34. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. It would also be detrimental to the safe and efficient operation of the public highway. This harm justifies the refusal of prior approval and the dismissal of appeal E.

Appeal F - Public Highway, adjacent 102 The Highway

35. The appeal site is located to the rear of the footway outside a fuel station, which also includes a fast food counter adjacent. The footway already includes other street furniture such as lampposts, traffic light, road signage and an existing kiosk, albeit of different design.
36. The path is narrow in this location and with the proliferation of existing street furniture as detailed above, the inclusion of the proposed kiosk would cumulatively result in an increasingly cluttered appearance to the pavement and the wider streetscene. While simple in design and form, the scale of the kiosk is considered to cause harm to the character and appearance of the area.
37. The narrow footway is already partially obscured by the existing column, leaving little room between this structure and the busy road for pedestrian movement. The immediate area is already very busy in terms of both pedestrian and vehicular movements, and the inclusion of a structure of this scale would cause a further narrowing of the path impacting negatively on the safe and efficient operation of the footway. I note the submitted dashboard analysis gives a figure of 3.2m existing width of the path and indicates the recommended width from the PCG as 2.9m. The site plan shows the remaining width would be 1.9m, well below the recommended.
38. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. It would also be detrimental to the safe and efficient operation of the public highway. This harm justifies the refusal of prior approval and the dismissal of appeal F.

Appeal G - Public Highway, Burdett Road adjacent Leybourne House

39. The appeal site is located to the rear of the footway outside Leybourne House, a residential block of apartments, set against railings and positioned close to an existing kiosk and an older style phone box. Burdett Road (A1205) runs past the site. Close to the site, there is existing road signage, streetlights and electrical cabinets.
40. The path has narrowed considerably with the installation of the two existing phone units, although these are set below the height of the railings along the boundary of the apartment block. The proposed unit, while simple in design and form, and when combined with the existing signage, call boxes and

lamppost, would cause further cluttering of the footway harming the character and appearance of the area.

41. Given the narrow profile of the footway in this location, the extension of the kiosk via its width when combined with the streetlights and double-width road signs would further narrow the footway for pedestrians. While the distance to be retained between the kiosk and railings may meet minimum standards as advised in the documents by TfL, the submitted analysis does not factor in existing street elements including the two phone boxes.
42. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. It would also be detrimental to the safe and efficient operation of the public highway. This harm justifies the refusal of prior approval and the dismissal of appeal G.

Appeal H - Public Highway, West India Dock Road near junction Pennyfields

43. The appeal site is located to the front of the footway at the junction of West India Dock Road (A1261) and Pennyfields. The path is wide in this location despite the presence of an existing phone box, electrical cabinets and a road sign. The path leads past a communal green space of an apartment block, and despite the busy feel of the location caused by the road, the section of pathway is open and spacious.
44. The inclusion of a large structure such as the proposal, while simple in design and form, would not sit comfortably within the area given the backdrop of the gardens. It would be much larger than the existing phone box and harm the character and appearance of the area by increasing the proliferation of street furniture in what is a relatively open stretch of public highway.
45. Turning to matters of the highway, the footpath is wide in this location and the kiosk would be set to the back of it. The distance to be retained between the kiosk and wall of the garden would meet minimum standards as advised in the documents by TfL, and from my observations on the site visit there would be no impacts upon pedestrian movements. Similarly, given the set-back from the road, there would be no adverse impact upon motorists.
46. To conclude, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. This harm justifies the refusal of prior approval and the dismissal of appeal H.

Appeal I - Public Highway, West India Dock Road corner with Westferry Road

47. The appeal site is located centrally within the footway outside of Westferry Docklands Light Railway station, at the junction of West India Dock Road (A1261) and Westferry Road. The location contains a large bicycle rental point alongside street furniture including trees, electrical cabinets, road signage and street lighting. The kiosk would be located between two of the trees.
48. The area contains a large proliferation of bicycles as well as those street elements mentioned. The inclusion of a large structure such as the kiosk, while simple in form and design, would interrupt this soft boundary between the footway and cycle storage area while also serving to add clutter to the already busy area. As such it would harm the character and appearance of the area.

49. Further to these concerns, the kiosk would be a large intrusion into an already busy area consisting of motorists, cyclists and pedestrians. I witnessed on the site visit how busy the area can become when a train arrives and people disembark. While the distance to be retained between the kiosk and structures nearby may meet minimum standards as advised in the documents by TfL, the submitted analysis does not factor in potential safety hazards due to the location so close to the road, cycle racks and pedestrian thoroughfares. I further note the objection of TfL to this proposal.
50. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. It would also be detrimental to the safe and efficient operation of the public highway. This harm justifies the refusal of prior approval and the dismissal of appeal I.

Appeal J - Public Highway, adjacent 70 Marsh Wall

51. The appeal site is located to the front of the footway adjacent to a large office building at Marsh Wall, under the railway track. The path already includes an existing phone box as well as streetlighting, traffic lights and a pedestrian crossing. The kiosk would be located between the phone box and lighting column.
52. The area is characterised by large, modern mixed-use buildings as well as the rail line intersecting the vicinity. Given the scale of the surrounding buildings, a structure of this scale would not appear out of character and its scale would accord with surrounding land use, especially given its modern design. As such, it is not considered the kiosk would cause harm to the character and appearance of the area.
53. Turning to matters relating to the safe and efficient operation of the highway, I noted the area to be extremely busy given this part of the site visit took place within the afternoon rush hour. The area was busy with people exiting the surrounding buildings and vehicular traffic added to this busy and congested feeling. The inclusion of a large structure on the footway would only serve to exacerbate the congestion, while also causing a slaloming effect as pedestrians moved along the footway. While the distance to be retained between the kiosk and walls of the office building and road may meet minimum standards as advised in the documents by TfL, the submitted analysis does not factor in existing structures.
54. Accordingly, the siting and appearance of the proposed telephone kiosk would harm the character and appearance of the area. It would also be detrimental to the safe and efficient operation of the public highway. This harm justifies the refusal of prior approval and the dismissal of appeal J.

Other Matters

55. Comments received from the Metropolitan Police Service suggest that the proposals could act as a focal point for anti-social behaviour. This was included in the refusal reason for each application within the context of safe and efficient operation of the highway. However, I have no conclusive evidence to demonstrate how this would be the case. Furthermore, I have no evidence that

would support the view that the siting of call boxes is a contributory factor to the rise in crime.

56. The proposed kiosks would all be located within busy pedestrian thoroughfares and would be open to wide public surveillance. Furthermore, as the design of the proposal does not include a front door and incorporates glass within the side panelling, any criminal or anti-social activity would be readily observed by pedestrians and other road users.
57. For the above reasons, I do not consider that the proposals would cause an increase in crime and anti-social behaviour in any of the areas subject to appeal.

Conclusion

58. For the reasons given above and having regard to all matters raised, I conclude that appeals A-J should be dismissed due to the harmful impacts from their siting and appearance.

Recommendation

59. For the reasons given above and having had regard to all other matters raised, I recommend that the appeals should be dismissed.

C McDonagh

APPEAL PLANNING OFFICER

Inspector's Decision

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

S Ashworth

INSPECTOR