
Appeal Decisions

Site visit made on 28 October 2019 by Hilary Senior BA(Hons) MCD MRTPI

by Susan Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

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 decision of the Council of the London Borough of Wandsworth.
 - The development proposed is installation of a public call box.
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Appeal A- Ref: APP/H5960/W/19/3231141

Public highway adj 522 Garratt Lane, London, SW17 0NZ

Grid Reference Easting: 526135 and Grid Reference Northing: 172506

- The application Ref 2018/5313, dated 6 November 2018, was refused by notice dated 19 December 2018.
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Appeal B- Ref: APP/H5960/W/19/3231199

Public highway adj 256 Balham High Road, London, SW17 7AW

Grid Reference Easting: 528280 and Grid Reference Northing: 172850

- The application Ref 2018/5348, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal C- Ref: APP/H5960/W/19/3231208

Public highway adj 209 Balham High Road, London, SW17 7BQ

Grid Reference Easting: 528303 and Grid Reference Northing: 172856

- The application Ref 2018/5302, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal D- Ref: APP/H5960/W/19/3231211

Public highway 271 Balham High Road, London, SW17 7BD

Grid Reference Easting: 528136 and Grid Reference Northing: 172469

- The application Ref 2018/5343, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal E- Ref: APP/H5960/W/19/3231196

Public highway 45 Upper Tooting Road, London, SW17 7TR

Grid Reference Easting: 527888 and Grid Reference Northing: 172231

- The application Ref 2018/5336, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal F- Ref: APP/H5960/W/19/3231192

Public highway 49 Upper Tooting Road, London, SW17 7TL

Grid Reference Easting: 527862 and Grid Reference Northing: 172202

- The application Ref 2018/5332, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal G- Ref: APP/H5960/W/19/3231204

Public highway 44 Upper Tooting Road, London, SW17 7PD

Grid Reference Easting: 527877 and Grid Reference Northing: 172237

- The application Ref 2018/5308, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal H- Ref: APP/H5960/W/19/3231206

Public highway 52 Upper Tooting Road, London, SW17 7PD

Grid Reference Easting: 527855 and Grid Reference Northing: 172212

- The application Ref 2018/5333, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal I- Ref: APP/H5960/W/19/3231209

Public highway 213 Upper Tooting Road, London, SW17 7TG

Grid Reference Easting: 527638 and Grid Reference Northing: 171766

- The application Ref 2018/5353, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Decisions

1. Appeals A- I 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 and Background

3. The appeals relate to proposals by Maximus Networks Ltd for the installation of a call box at nine sites in the London Borough of Wandsworth. 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 (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 provisions of the GPDO require the proposed development to be assessed solely on the basis of its siting and appearance. Therefore, whilst the appellant has referred to the purported benefits of the proposed kiosk, I have not taken these matters into account other than in respect of heritage assets where the NPPF advises at Paragraph 196, "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."
 6. The proposals before me were refused by the Council on grounds relating to siting and appearance. However, the *Westminster* 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).
 7. In the case of the appeals before me, I have taken into account the submitted Opinion of Counsel regarding this matter and the description of the proposed kiosks provided. It is apparent that the form and design of the proposed telecommunications apparatus is driven by its proposed functionality as a public call box. I have no evidence to suggest that the proposed development includes elements that are there for the purpose of advertising.
 8. In its reason for refusal, in the case of several of the appeals before me, the Council has raised concern that, given the presence of other kiosks in the vicinity, the proposal is not for the purpose of the operator's electronic communications network. However, the question of necessity or need is not part of the test of Part 16. 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.
 9. The Council has made reference in its decision notices to Policies DMS1, DMS9, DMT1 of the Wandsworth Local Plan Development Management Policies Document (2016), Policies IS3 and PL3 of the Wandsworth Local Plan Core Strategy (2016) as well as policies in the adopted and draft London Plan. 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 in so far as they are relevant to matters of siting and appearance. The appellant refers also to guidance within The London Plan (2016) as well as Streetscape Guidance and the Pedestrian Comfort Guidance for London, both produced by Transport for London (TfL) and the Mayor of London which I have taken into account.
 10. The proposed kiosks 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 photovoltaic glass to maximise the energy generating potential. LED lighting strips on the outside edges of the call box are included for safety purposes, solely to identify the edge of the structure on the pavement during hours of darkness and will be in a customisable contrasting colour. The submitted details indicate that the overall colour of the kiosk is customisable but would typically be 'gun metal' grey or black and will have a 'sheen' through the integral use of toughened glass and photovoltaic glass in the structure. The proposed structure would be 3.119m high, 1.325m wide and 0.219 m deep.

Main Issues

11. The main issues are:

- For Appeals A, E, F, G, H and I, whether or not approval should be given in respect of the siting and appearance of the proposed development, with particular regard to its effect on the character and appearance of the area, and its effect upon the safe and efficient operation of the highway, and
- for appeals B, C and D, whether or not approval should be given in respect of the siting and appearance of the proposed development, with particular regard to whether it would preserve or enhance the character or appearance of the conservation area or preserve the setting of listed buildings, and its effect upon the safe and efficient operation of the highway.

Reasons

Appeal A- Public highway adj 522 Garratt Lane, London, SW17 0NZ

12. The appeal site is located on Garratt Lane, close to the junction with Littleton Street. The proposed call box would be located at the rear edge of the footway, close to the flank wall of Garratt Park School.
13. There is little other street furniture in the vicinity of the site giving the area a spacious and uncluttered feel. Given the location of the proposed kiosk abutting the brick wall and due to the presence of a further call box in a similar alignment, the proposed call box would not necessarily be incongruous in the street scene. Therefore, the proposal would not be harmful to the character and appearance of the area.
14. However, the proposed public call box would be close to the junction with Littleton Street and would cause a narrowing of the footway leading to an adverse effect on the safe and efficient use by pedestrians crossing both Littleton Street and using the crossing point on Garratt Lane. The proposal would therefore be detrimental to the safe and efficient operation of the highway.

Appeal B- Public highway adj 256 Balham High Road, London, SW17 7AW

15. The appeal site is at the junction with Marius Road and Balham High Road at the front of the footway in an area of footway that protrudes into the

carriageway with cycle stands. The buildings are in a mixed commercial and residential use.

16. There are two listed buildings (207 and 211 Balham High Road) on the opposite side of the road. Historically, the listed buildings have been located adjacent to a busy road, with associated street furniture. That environment has a neutral impact on the significance of the heritage assets. Due to the width of the road and the fact that the buildings are set back from the highway there would be limited additional impact on the setting of the heritage assets as a result of this proposal. Therefore, the location of the call box would make a neutral contribution to the significance of the listed buildings.
17. The footway is wider in the vicinity of the site due its extension into the road for the installation of cycle stands. The rest of the footway is significantly narrower and is close to a traffic light controlled pedestrian crossing. There is street signage, a post box, street trees and an existing kiosk giving the area an already cluttered appearance. The proposal, being a tall and bulky structure, would add to this existing clutter which would cause harm to the character and appearance of the area.
18. As the proposed public call box would be close to the junction with Marius Road, and close to the kerb edge of the footway, due to its dimensions it would impede both pedestrian movement and the visibility of drivers leaving Marius Road onto Balham High Road. The proposal would therefore be visually intrusive and detrimental to the safe and efficient operation of the highway.

Appeal C- Public highway adj 209 Balham High Road, London, SW17 7BQ

19. The appeal site is located at the front of the footway in an area where the pavement is wide and relatively uncluttered by existing street furniture. It is located between two Grade II listed buildings at 207 and 211 Balham High Road. In this location, and particularly when viewed from the opposite side of the road, the call box would appear as a large incongruous element of street furniture and would detract from the open setting of the listed buildings. I therefore find that the proposal would cause harm to the setting of the listed building and thereby have a negative impact on their significance.
20. The addition of the proposed public call box would be visually discordant and result in a cluttered appearance that would detract from the spacious character and appearance of the street scene. The call box would be larger than the existing elements of street furniture and consequently, it would result in an impression of clutter and be visually obtrusive and prominent within the street scene.
21. The pavement in the vicinity of the proposed kiosk is wide and open with little street furniture. I am satisfied on the basis of all I have seen and read that the location of the proposed call box would not cause an undue obstruction of the pavement and therefore would not adversely affect the safe and efficient operation of the highway.
22. For the reasons set out above, due to its siting and appearance, the proposed call box would have a harmful effect upon the character and appearance of the area, including the setting of heritage assets.

Appeal D- Public highway 271 Balham High Road, London, SW17 7BD

23. The appeal site is on Balham High Road and within the Heaver Estate Conservation Area (CA). The statutory requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
24. Due to the layout of the road, this part of Balham High Road can be seen from long range views in both directions. It is characterised by four story terraces with residential accommodation above a commercial ground floor. Many of the retail units have retained their original shop frontages
25. In the vicinity of the proposed call box there are already a number of elements of street furniture, including a call box, cash machine, cycle stands, free standing advertisement boards, litter bins and road signs. In addition, at the time of the site visit, there were shop advertisements and flags on the footway, leading to a narrowing of the space available to pedestrians. However, due to the proposed location of the call box in relation to that already in situ, the proposal would not cause undue obstructions to pedestrian movements and therefore would not adversely affect the safe and efficient operation of the highway.
26. However, the proposed public call box would add to the cumulative effect of the street furniture in this location. Given the height of the proposal it would appear incongruous in the street scene and would be detrimental to the character or appearance of the CA leading to less than substantial harm in respect of the significance of the heritage asset as a whole. Public benefits may arise from the proposal in terms of providing free calls and Wi-Fi to users. However, in this case, these benefits do not outweigh the harm to the heritage asset identified.

Appeal E- Public highway 45 Upper Tooting Road, London, SW17 7TR

27. The appeal site is on Upper Tooting Road, close to the junction with Topsham Road in an area of retail uses and restaurants with residential accommodation above. The proposed call box would be located close to the kerb edge of the footway where there are already some low height elements of street furniture, such as a litter bin and a junction box, as well as street signs and a CCTV post.
28. There is also a bus stop in close proximity to the site. At the time of the visit there were several people waiting for a bus, causing congestion on the footway, due to its limited width. Added to that, as a result of the high level of footfall including pedestrians entering and leaving the nearby retail premises, the proposal would hinder pedestrian movement and would adversely affect the safe and efficient operation of the highway.
29. Additionally, due to the height and form of the proposed public call box, it would appear as a jarring feature in the street scene, and would add to the street clutter in this location, harming the character and appearance of the area.

Appeal F- Public highway 49 Upper Tooting Road, London, SW17 7TL

30. The appeal site is located outside a large three storey red brick and stone building that was formally the telephone exchange. This area of footway is relatively uncluttered. This adds to the open spacious character of this part of Upper Tooting Road.
31. Due to the height and width of the proposed public call box, and its location away from other large structures, the proposal would reduce the open character of the vicinity and appear as a discordant and visually intrusive feature. As such it would harm the character and appearance of the area.
32. In this location the pavement is relatively wide and free from large elements of street furniture. The location of the proposed call box in relation to the highway would not cause an undue obstruction of the pavement and therefore would not adversely affect the safe and efficient operation of the highway. Nevertheless, for the reasons set out above the proposal would be harmful to the character and appearance of the area.

Appeal G- Public highway 44 Upper Tooting Road, London, SW17 7PD

33. The appeal site is close to the junction with Mandrake Road in a mixed commercial area of offices, retail uses and restaurants. The buildings are single storey on a relatively narrow footway.
34. In the vicinity of the proposal there are several elements of street furniture including two call boxes, a lamp post and litter bin. Additional elements of street furniture in this location would reduce the amount of footway available to pedestrians, particularly in the vicinity of the junction with Mandrake Road. Given the high level of footfall, including pedestrians entering and leaving the nearby retail premises, the proposal would hinder pedestrian movement and would adversely affect the safe and efficient operation of the highway.
35. Due to the proposed location of the public call box close to the road junction, it would also be physically and visually intrusive in a prominent location, causing harm to the character and appearance of the area.

Appeal H- Public highway 52 Upper Tooting Road, London, SW17 7PD

36. The appeal site is close to the kerb edge, in front of a commercial frontage in an area that is uncluttered by street furniture close to the traffic light controlled junction with Beechcroft Road. This openness provides clear sightlines for pedestrians and vehicles.
37. The structure, due to its height and width, would create an obstruction to pedestrian movement as well as to visibility at the junction and would therefore adversely affect the safe and efficient operation of the highway.
38. In addition, the proposal would be a discordant feature in the streetscape and effect the open character of the area. The introduction of a call box of the height and width proposed would cause harm to the character and appearance of the area.

Appeal I- Public highway 213 Upper Tooting Road, London, SW17 7TG

39. The appeal site is at the kerb edge, on Upper Tooting Street close to the junction with Kellino Street, in a busy commercial area fronting commercial properties. There is no street furniture of the size proposed in this location, which is limited to a CCTV camera pole, lamp post and junction box.
40. The width of the proposed public call box would narrow the footway close to the road junction and would introduce an additional structure in a highly visible and prominent location causing an obstruction for pedestrians. The structure, due to its height and width, would create an obstruction to pedestrian movement as well as to the sightlines to the junction and would therefore adversely affect the safe and efficient operation of the highway.
41. As noted above, there is little street furniture of the height and bulk of the proposed call box in the vicinity of the appeal site. The additional of the call box would be prominent and highly visible located close to the junction. The proposal would therefore cause harm to the character and appearance of the area.

Other Matters

42. In relation to appeals A-I, my attention has been drawn to several other appeal decisions. I do not have the full details of the other cases and so cannot determine whether the circumstances are the same as the proposals before me. Notwithstanding this, I note that some of the other cases are within other local planning authority areas, where a different character and appearance will prevail. Moreover, the proposed call boxes have their own settings. As such, the other appeal decisions referred to are not determinative points in favour of the proposals.

Conclusion and Recommendation

43. For the reasons given above and having regard to all other matters raised, I recommend that the appeals are dismissed.

Hilary Senior

APPEALS PLANNING OFFICER

Inspector's Decision

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

Susan Ashworth

INSPECTOR

