



Appeal Decisions

Site visit made on 14 January 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2020

Appeal Ref: APP/U5360/W/19/3231164

Public Highway, 12 Morning Lane, London, E9 6NA

- The appeal is 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, Class A 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 the Council of the London Borough of Hackney.
 - The application Ref 2018/4117, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/U5360/W/19/3231165

Public Highway, 35 Mare Street, London E8 4RP

- The appeal is 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, Class A 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 the Council of the London Borough of Hackney.
 - The application Ref 2018/4156, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/U5360/W/19/3231175

Public Highway, 61 Mare Street, London E8 4RG

- The appeal is 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, Class A 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 the Council of the London Borough of Hackney.
 - The application Ref 2018/4134, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/U5360/W/19/3231177

Public Highway, 52 Well Street, London E9 7PX

- The appeal is 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, Class A 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 the Council of the London Borough of Hackney.
 - The application Ref 2018/4119, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/U5360/W/19/3231179
Public Highway, 75 Amhurst Road, London E8 2AH

- The appeal is 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, Class A 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 the Council of the London Borough of Hackney.
 - The application Ref 2018/4120, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/U5360/W/19/3231180
Public Highway, Adj. 270 Wick Road, London E9 5DQ

- The appeal is 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, Class A 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 the Council of the London Borough of Hackney.
 - The application Ref 2018/4138, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/U5360/W/19/3231184
Public Highway, Pembury Road Adj. Atkins Square, London E8 1FA

- The appeal is 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, Class A 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 the Council of the London Borough of Hackney.
 - The application Ref 2018/4130, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Appeal Ref: APP/U5360/W/19/3231185
Public Highway, Cassland Road Adj. Vaine House, London E9 5BT

- The appeal is 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, Class A 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 the Council of the London Borough of Hackney.
 - The application Ref 2018/4118, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is a public call box.
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Decisions

1. The appeals are dismissed.

Procedural Matters and Background

2. The appellant has submitted a draft Statement of Common Ground (SoCG) for each of the appeals. As these appeals are being determined under the Written Representations procedure and the Council has not signed each SoCG, whilst I have noted their contents, I have not treated this as common ground between the parties.
3. Each of these appeals relates to separate proposals for the installation of similarly designed public call boxes referred to by the appellant as being of a 'Max 2' type. Each of the boxes are proposed to be sited in varying locations on pavements within the London Borough of Hackney. For simplicity, the appeals have been included on the same decision letter.
4. As a licenced electronic communications code operator, the appellant benefits from deemed planning permission for public call boxes erected as communications apparatus 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) (England) Order 2015 (GPDO), subject to the prior approval requirements under paragraph A.3. The appellant applied to the Council on that basis. The Council determined that prior approval was required for the siting and appearance of the communication apparatus.
5. 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 permitted development rights 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 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 case in respect of these appeals before me.
6. Class A of Part 16, Schedule 2 of the GPDO refers to development '*by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network*'. The judgement in *Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd* [2019] EWHC 176 (Admin) (the Westminster judgement) considered the matter of development for the purpose of an electronic communications code operator's electronic communications network for the purposes of Part 16, Class A of Schedule 2 of the GPDO.
7. The Council reached their decisions on the appeal applications prior to the passing down of the Westminster judgement and the reasons do not refer directly to the judgement. Instead, each of the appeal applications were refused by the Council on grounds mainly relating to siting and appearance of the call boxes. However, the Westminster judgement confirmed that the assessment as to whether a telecommunications apparatus comes within the

scope of Part 16, Class A of the GPDO has to be made before siting and appearance are considered.

8. During the Council's consideration of the applications reference has been made in representations to some of the proposals, for the potential for the proposed call boxes to be used for the display of posters or advertisements. The erection of a telecommunications apparatus and the display of advertisements are distinct and separate matters requiring different applications. These appeals relate to the erection of a structure only and not any advertisement consent that may otherwise be required. These appeals have, therefore been assessed on that basis.

Main Issue

9. Following the Court's judgement in the Westminster case referred to above, the main issue is whether the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

10. Each appeal scheme before me is described by the appellant as including the erection of a public call box which is an electronic communication apparatus comprising a public telephone, Wi-Fi and other technology related to mobile telecommunications. The design of the proposed call boxes for each appeal is referred to by the appellant as being a 'Max 2' type public call box.
11. The appellant has provided Counsel's opinion on the relevance of the Westminster judgement to the appellant's appeals before me involving the Max 2 design. The opinion states that '*in the absence of advertising forming part of the application, those glazed parts of the call boxes cannot lead to any conclusion of there being a dual purpose for advertising*'. It concludes that '*the New World case is based on materially different facts from the Maximus cases, such that it is of no application to the appeals currently under consideration by the Planning Inspectorate*'.
12. However, the Westminster 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 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...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.*'
13. The appellant has submitted notices served on the Council for the notification of each prior approval. The notices refer a single non-illuminated advertising panel (1100mm x 1700mm) located on the rear face of the box, in accordance with the provisions of the Advertisement Regulations 2007.
14. It is evident from the plan/drawing MAX 2 ASSEMBLY Rev C dated 6 September 2018, which accompanied the applications subject of these appeals, the rear

elevation of each of the call boxes is designed to house a '*Non-illuminated display panel*' with a '*Visual Area*' measuring approximately 1100mm by 1700mm. From the evidence the rear elevations of the proposed developments would incorporate substantial panels which are specifically designed for display purposes and thereby resulting in these structures at least falling partly outside Part 16, Class A of the GPDO. This assessment is irrespective of whether such display panels might also be used to access the internal equipment within the structures for maintenance purposes.

Other Matters

15. The appellant has made reference to some of the sites¹ already being considered suitable at appeal for the siting of a public call box, for a development referred to as the 'Max 1' unit. However, the full details and circumstances of those proposals are not before me.
16. Some of the Council's delegated reports have referred to appeals at or close to the appeal sites for some of the appeals subject of this decision letter. Appeal ref APP/U5360/W/18/3213758 at or close to ref 3231175, ref 3213801 at or close to 3231184, ref 3213773 at or close to ref 3231179, and ref 3230799 at or close to 3231164. Some of those and other proposals that appear to be in a similar location to the appeals subject of this decision letter, are the subject of a decision letter² provided by the Council. The full details and circumstances of each of those appeal proposals are not before me, although the design of the call box referred to in that decision letter appear materially different to the design of the 'Max 2' call box subject of the appeals before me. I have considered each of the appeal proposals before me on their own merits.

Conclusion

17. In-light of the above, it is concluded that in each case, the proposed installation is not solely for the purpose of the operator's electronic communications network. Therefore, they fall outside Schedule 2, Part 16, Class A of the GPDO. For this reason, it is not necessary to consider issues relating to their siting or appearance because these appeals should be dismissed.

Dan Szymanski

INSPECTOR

¹ 3231165, 3231175, 3231179, 3231180, 3231184.

² 3213744, 3213757, 3213758, 3213761, 3213773, 3213780, 3213793, 3213801.