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## Appeal Decision

Site visit made on 25 November 2019

**by Stephen Wilkinson BA BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2<sup>nd</sup> March 2020**

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**Appeal Ref: APP/X5990/W/19/3231072**

**Public Highway, 200 Buckingham Palace Road London SW1W 9TJ**

**Grid reference: 528623 178614**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required by Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order as amended.
  - The appeal is made by Maximus Networks Ltd against the decision of City of Westminster Council.
  - The application Ref 18/09284/TELCOM, dated 30 October 2018, was refused by notice dated 19 December 2018.
  - The development proposed is a public call box.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. This appeal relates to a proposal for a public call box. As a licenced electronic communications code operator, the appellant benefits from deemed planning permission as communications apparatus falls within the permitted development rights of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, such permission is subject to the prior approval requirements under paragraph A.3. The Council determined the application having regard to its siting and appearance.
3. After the Council had refused the application, on 25 May 2019, the General Permitted Development Order (GPDO) amendment Order 2019 came into force. This removed permitted development rights for the installation of telephone kiosks. However, this was subject to transitional and saving provisions. Where an application for prior approval was refused before that date and appealed within 6 months of the date of refusal, the Order continues to have effect as the amendments had not been made. This is the case in respect of this appeal.
4. Since the application was determined, the Courts<sup>1</sup> have confirmed that in order to be permitted development the whole development must be for the purpose of the operator's electronic communications network. Notwithstanding the Council's decision, the judgement confirmed that the assessment as to whether

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<sup>1</sup> New World Payphones Ltd v SSHCLG & Westminster CC 2019 EWCA Civ 2250

- a telecommunications apparatus comes within the scope of Part 16, Class A of the GPDO has to be made before other matters such as siting and appearance are considered.
5. In view of this change of circumstances I invited the parties to comment on the Westminster judgement. I have taken their responses into account in reaching my decision. Both parties replied, with the Council enclosing a copy of the Court of Appeal decision, dated 18 December 2019 which upheld the High Courts decision. Other decisions of my Inspector colleagues were included as well where they had taken the view that similar structures do not fall within Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
  6. The appellant's response included a Counsel's opinion which distinguishes between this proposal and that which was the subject of the New World Payphones cases. The opinion identifies the possibility of advertisements being displayed on one glazed surface of the call box at some time in the future. Whilst the opinion makes clear that the primary intention is for the kiosk to be used for telecommunications there remains the possibility that it could be used for the display of an advertisement.
  7. The Court of Appeal decision, confirmed the following: 'The GPDO could not be used to obtain planning permission for a mixed planning use or 'dual purpose' because to allow it to be so used would allow permission to be obtained for development that was outside the scope of that permitted by executive (and, ultimately, by Parliament) under the GPDO which would be an abuse of the GPDO.' Where a proposed telephone kiosk did not merely have a single purpose, it would therefore clearly fall outside the scope of the GPDO.
  8. Given that this decision confirmed that of the High Court there was no need to go back to the parties to seek their views.

### **Main Issues**

9. When taking into account the commentary above, the main issue is whether or not the proposals are solely for the purposes of the operator's electronic communications network.

### **Reasons**

10. The appeal scheme is described by the appellant as including the erection of a public call box which is an electronic communication apparatus which comprises a public telephone, Wi-Fi and other technology related to mobile telecommunications. The design of the proposed structure is referred to by the appellant as a being a MAX 2 call box. The material around the phone within the structure would comprise toughened glass within a stainless steel side profile with a PV panel and the panel facing the other side is described as a non illuminated display panel which has a 'visual area' of 1700 x1100mm.
11. It is clear from drawing MAX 2 ASSEMBLY Rev C, submitted with the appeal, that the kiosk would have a dual use with the main rear panel incorporating an area designed for commercial display. Accordingly, the appeal proposal is not solely for the purposes of the operator's electronic communications network and as such falls outside Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

## **Conclusions**

12. For this reason, it is not necessary to consider issues relating to the siting or appearance of this proposal because the appeal is dismissed.

*Stephen Wilkinson*

INSPECTOR