



Appeal Decision

Site visit made on 7 June 2019

by F Rafiq BSc (Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 March 2020

Appeal Ref: APP/H5960/W/18/3210663

130 West Hill, London, SW15 2UF

- 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 Wandsworth.
 - The application Ref 2018/0305 dated 18 January 2018 was refused by notice issued with a date of 13 March 2018.
 - The development proposed is the installation of a call box.
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Decision:

1. The appeal is allowed and approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the siting and appearance of a call box at 130 West Hill, London SW15 2UF in accordance with the terms of the application Ref 2018/0305, dated 18 January 2018, and the plans submitted with it.

Procedural Matters

2. As an electronic communications code operator, the appellant benefits from deemed planning permission for a proposed payphone kiosk (also known as a public call box) under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 as amended (GPDO), subject to prior approval by the local planning authority of siting and appearance. The appellant applied to the Council on that basis. The Council determined that prior approval was required and refused for the siting and appearance of the call box subject to this appeal.
3. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the GPDO 2015. 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 2015 by the 2019 Regulations had not been made. That is the case in respect of this appeal before me.

4. The Council have made reference in the decision notice to various policies. In general terms, and amongst other things, these require high quality development, including street furniture which reflects the character and appearance of surrounding buildings, maintains uncluttered spaces, avoids visual intrusion, contributes to ease of movement through the public realm, and encourages a simplified streetscape. They also seek a high quality pedestrian environment by reference to Transport for London ('TfL') Pedestrian Design Guidance. At paragraph 11.1 the TfL Streetscape Guidance 2017 ('Streetscape Guidance') sets out that there is no 'one solution fits all' approach, but it seeks to avoid a cluttered environment as a result of excessive street furniture. I also note that a new London Plan is being prepared, and that the Mayor has issued his intention to publish the London Plan following the receipt of the Inspectors' recommendations. In its consultation response, TfL referred to emerging policies in that plan, which I have also considered.
5. The principle of development however is established by the GPDO 2015 and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO 2015 includes no requirement that regard be had to the development plan. 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. I, therefore, take account of the referenced policies of the development plan, including emerging policies and any related guidance in so far as they are a material consideration relevant to matters of siting and appearance.
6. I have also considered the National Planning Policy Framework ('Framework') which supports high quality and reliable communications infrastructure and, in general terms, requires high quality design. At paragraph 116 it also sets out that local planning authorities should not question the need for an electronic communications system. Whilst the Framework has been revised since the application was determined, its stance in these respects has not significantly changed.
7. The determination of each of this appeal follows a High Court judgement in the decision of Ouseley J in Westminster CC v. SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin). The decision in this case concluded that the relevant telephone kiosk was for the dual purpose of advertisement display and telecommunications use, stating that it contained features which were for advertising and not there at all for the telecommunications function.
8. In respect of this appeal case, based on the evidence before me, including the submitted drawings and technical details, I find that it does not clearly show that the proposed telephone kiosk is intended to support advertising. I have taken into account that deemed consent allows for a non-illuminated advertisement on the glazed surface of one face of the kiosk. However, in the absence of any particular advertising elements or features, to me this appeal should not be considered to constitute a dual purpose and therefore prior approval consideration of siting and appearance must be considered.
9. Reference has been made to appeal decisions on other sites, but I am not aware of the full circumstances of those cases. I can confirm that I have considered this appeal on its own merits.

Main Issues

10. The main issues are:

- i) the effect of the siting and appearance of the proposed call box upon the character and appearance of the area; and
- ii) the effect of the siting of the proposal on the safety and convenience of highway users.

Reasons

Background

11. The appeal relates to a proposed free standing call box of a rectangular form. It would have an overhanging roof with an area of around 1.325 metre by 1.125 metre and would be about 2.6 metre high. It would be constructed with a steel frame and casings, and clear polycarbonate and toughened glass, with a solar panel on the roof.

Character and appearance

12. This part of West Hill is generally characterised by substantial buildings which are set well back from the carriageway, often behind areas of open space and landscaping. Although the Council describes the section of footway where the proposed call box would be located as having a limited width, according to the appellant's calculations, it is around 5 metres wide, and I observed that it contributes to the area's generally open and spacious character.
13. Whilst there is a bus shelter broadly opposite the appeal site, there is only a limited amount of street furniture on this side of the road. I agree with the Council that the area is generally free of clutter.
14. Although the proposal would be somewhat wider than a traditional call box, this one would have an open front, and narrow, largely transparent sides. This would give it a fairly simple and lightweight appearance, and would temper its visual effect. It would be set back about 0.45 metre from the carriageway and some distance from existing street furniture on this section of the pavement.
15. Consequently, whilst the proposed call box's siting would be fairly prominent, given its design and the limited amount of street furniture nearby, it would not give rise to a significant sense of clutter. Both main parties have drawn my attention to other appeal decisions involving call boxes, including some within Wandsworth. However, for the above reasons, and in the context of substantial nearby buildings, the proposed call box in this location would not be visually intrusive. I find that its siting and appearance would not unduly harm the character and appearance of the area.

Highway safety

16. According to the appellant's estimates, pedestrian flows in the area are much less than 600 per hour, which is 'low' when applying the TfL Pedestrian Comfort Guidance for London 2010 ('Comfort Guidance'). My own observations represent a snapshot in time, but generally support this position as there were few pedestrian movements in the area at the time of my visit.

17. I have found that this section of footway is fairly wide and uncluttered, with only a minimal amount of street furniture. The appellant calculates that, allowing for the call box's set back from the carriageway, there would still be a 3.3 metre wide 'clear zone'.
18. In my view, and in the context of this area, that would be sufficient to enable pedestrians to pass safely and conveniently along this section of the footway, whatever the intended orientation of the call box given that it is set away from the kerb edge. My conclusion on this matter is supported by the stance in the Streetscape Guidance which suggests a preferred minimum footway clear zone of 2 metres to allow for unhindered pedestrian movement and by the Comfort Guidance which recommends that, in areas with a low flow, a footway width of 2.9 metres is enough for comfortable movement and to accommodate a large piece of street furniture.
19. The Council have made a general reference to a programme of upgrades to roads and pavements within the Borough, which include efforts to improve the amenity of the streetscene. However, whilst it refers to the potential for this call box to interfere with any future plans to amend the adjacent cycle lane or nearby bus stop, I have no detailed information before me of any such proposal.
20. For all the above reasons, I conclude that the siting of the proposed call box would not have a significant adverse impact on the safety and convenience of highway users.

Conditions

21. The Council has suggested a single condition in the event that the appeal is allowed. However, any planning permission granted for a call box under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in Paragraphs A.3(9), A.3(11) and A.2(2). These specify that the development must, except to the extent that the local planning authority otherwise agree in writing, be carried out in accordance with the details submitted with the application, must begin not later than the expiration of 5 years beginning with the date on which the local planning authority received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

22. For the reasons given above and having regard to all matters raised, including reference to a previous application, I conclude that the appeal should be allowed and prior approval granted.

F Rafiq

INSPECTOR