
Appeal Decisions

Site visits made on 2 December 2019 by Andreea Spataru BA (Hons) MA

Decision by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 14th May 2020

Appeal A Ref: APP/V5570/W/19/3231245

Public Highway Pentonville Road ADJ. 1 Penton Rise, London WC1X 9EH

Grid Reference Easting: 530932 and Grid Reference Northing: 183067

- 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 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 Islington.
 - The application Ref P2018/3648/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a public call box.
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Appeal B Ref: APP/V5570/W/19/3231147

Public Highway Kings Cross Road Corner Lloyd Baker Street, London WC1X 9AA

Grid Reference Easting: 530993 and Grid Reference Northing: 182534

- 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 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 Islington.
 - The application Ref P2018/3672/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
 - The development proposed is a public call box.
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Decisions

1. The appeals 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 appeals.

Procedural Matters

3. The appeals relate to proposals by Maximus Networks Ltd for the installation of a public call box at 2 sites in north London across the Borough of Islington. 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 call box, 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 call boxes are solely for the purpose of the operator's electronic communications network is a matter of dispute between the main parties. While not given at the time of the initial decisions, the Council recommends a further refusal reason for all appeals on the basis that the call boxes are not solely for the purpose of the operator's telecommunications network as required in Schedule 2, Part 16, Class A of the GPDO as they include advertising space.
8. The design of both of the proposed call boxes is the same, comprising a freestanding steel-framed call box, 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. Both would comprise a two-sided structure of either black or dark grey appearance. While the orientation of the call boxes 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 call box, in these appeals, only the construction of the call boxes is being considered, and the appellant is not seeking advertisement consent.

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

There is nothing within the evidence before me to indicate that the call boxes 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.

9. 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.
10. The Council has made reference in its decision notices to Policies 6.10, 7.4, 7.5 of The London Plan (TLP), policies CS8 and CS9 of the Core Strategy (CS), policies DM2.1, DM2.3 and DM2.7 of the Development Management Policies (DMP), The Islington Urban Design Guide (UDG), The Islington Streetbook Supplementary Planning Document (the SPD) and the emerging draft London Plan Policies T2 and D7 (ELP). Similarly, the appellant has introduced Streetscape Guidance (SG) and Pedestrian Comfort Guidance for London (PCG), both published by Transport for London.
11. 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.
12. Appeal B relates to a site that is located within a Conservation Area. According to statute, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention shall be paid to the desirability of conserving or enhancing the character or appearance of these areas. National planning policy, as set out in the National Planning Policy Framework (the Framework), states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation, and that significance can be harmed or lost through development within their setting.
13. Furthermore, where the appellant has referred to the benefits of the proposal, I have only taken these matters into account in respect of the appeal where heritage assets have been cited, as the Framework 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".

Main Issues

14. The main issues for all appeals are 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.

Reasons for the Recommendation

Appeal A - Pentonville Road ADJ. 1 Penton Rise

15. The site is located on a section of pavement that is close to the junction of Penton Rise. In this area are a variety of items comprising the street furniture, such as traffic signs/signals, street lighting and a digital traffic information display. Mature street trees are set into the pavement adjacent to the railings along Pentonville Road. The character of the area surrounding the site is mixed, with residential, commercial and retail units in the locality. However, in the immediate vicinity of the site, the proposal would be read alongside the adjacent residential development and the railings on its boundary.
16. The call box would be sited in line with the street trees. Whilst there are several items located on the street in the proximity of the site, they do not appear overly prominent. The proposal would appear significantly larger in terms of its massing and bulk compared to the existing items present, thus making it more apparent in the streetscene. Given the existing items located within vicinity of the site, and the size and prominent position of the call box, the proposal would add to the sense of lack of openness and clutter. This would be harmful to the character and appearance of the area.
17. The site is located on the pavement of a wide and fairly straight stretch of highway, in line with the existing street furniture and trees. Given this, the proposed call box would not significantly intrude on the sight lines of motorists travelling along Pentonville Road and there would remain a sufficiently wide unobstructed footway between the development and the railings for pedestrian movement to not be significantly hindered. Although the site is within proximity to a pedestrian crossing, the call box would not create a visual obstruction that would hinder inter-visibility between pedestrian crossing the road and drivers. In the absence of any evidence to the contrary, I consider that the safe and efficient operation of the highway would not be harmed.
18. Accordingly, the siting and appearance of the proposed call box would harm the character and appearance of the area. The lack of harm to highway safety is a neutral matter that does not outweigh the above consideration. This justifies refusal of prior approval and the dismissal of appeal A.

Appeal B - Kings Cross Road Corner Lloyd Baker Street

19. The appeal site is at the edge of the New River Conservation Area (NRCA) and adjacent to the Rosebery Avenue Conservation Area (RACA). The proposed call box would be sited within close proximity to a pedestrian crossing, to the junction of Lloyd Baker Street, thus it would be visually prominent within the streetscene. At the time of my site visit, the site adjacent to the proposal was enclosed by hoarding due to construction work taking place. Nevertheless, it was still possible to assess the streetscene and the amount of pavement in this area.
20. The street furniture is limited on this section of pavement, and includes traffic signs/signals, street lighting and cycle parking. The addition of the mass of the proposed approximately 3.1m high call box in this prominent location would have a visually intrusive and cluttering effect on the approach to the junction of Kings Cross Road with Lloyd Baker Street, including this part of the NRCA.
21. Accordingly, I find that the proposal would harm the character and appearance of the area and would fail to preserve or enhance the character or appearance of the NRCA and the adjacent RACA. The harm arising would be localised and, in respect of the significance of the heritage assets as a whole would be less

than substantial. The extent of the benefits of the call box would be modest based on the development and its use, and therefore does not outweigh the significant weight given to the conservation of the designated heritage assets. Accordingly, the proposal also fails to accord with the Act.

22. Given its siting in relation to the road, the proposed call box would not significantly intrude on the sight lines of motorists travelling along Kings Cross Road. However, the introduction of a high, solid structure within close proximity to the pedestrian crossing, on the desired line for walking, particularly for pedestrians walking between Lloyd Baker Street and Margery Street, would have an unacceptably adverse effect on pedestrian permeability.
23. In conclusion, the proposed call box would harm the character and appearance of the heritage assets. The proposal would also be detrimental to the safe and efficient operation of the highway. This justifies the refusal of prior approval and the dismissal of appeal B.

Other matter

24. The appellant has referred to appeal decisions regarding similar proposals for the installation of public call boxes. However, I have considered each proposal before me on its own individual merits and the specific circumstances and context of each case.

Recommendation

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

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

26. 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