
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: 14 May 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 decisions of the City of Westminster Council.
 - The development proposed in each case is a public call box.
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Appeal A Ref: APP/X5990/W/19/3231057

Public Highway 334-348 Oxford Street, London W1C 1JG

Grid Reference Easting: 528653 and Grid Reference Northing: 181152

- The application Ref 18/09348/TELCOM, dated 1 November 2018, was refused by notice dated 17 December 2018.
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Appeal B Ref: APP/X5990/W/19/3231053

Public Highway 186 Edgware Road, London W2 2DS

Grid Reference Easting: 527294 and Grid Reference Northing: 181465

- The application Ref 18/09291/TELCOM, dated 31 October 2018, was refused by notice dated 17 December 2018.
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Appeal C Ref: APP/X5990/W/19/3231055

Public Highway 29-31 Edgware Road, London W2 2JE

Grid Reference Easting: 527603 and Grid Reference Northing: 181123

- The application Ref 18/09340/TELCOM, dated 1 November 2018, was refused by notice dated 17 December 2018.
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Appeal D Ref: APP/X5990/W/19/3231052

Public Highway 15-17 Edgware Road, London W2 2JE

Grid Reference Easting: 527632 and Grid Reference Northing: 181094

- The application Ref 18/09296/TELCOM, dated 31 October 2018, was refused by notice dated 17 December 2018.
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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 appeal.

Procedural Matters

3. The appeals relate to proposals by Maximus Networks Ltd for the installation of a call box at 4 sites across the City of Westminster. 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. A recent High Court Case in Westminster¹, concerned prior approval appeals for telephone kiosks under Part 16 Class A of the GPDO. The judgment considered development 'for the purposes' of an operator's network. The Court found that the judgment as to whether the kiosk, as applied for, comes within the scope of Class A must be made before siting and appearance are considered. The case related to the inclusion of advertisements on public call boxes. The judgment 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 judgment 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, for example the display of an advert, it cannot be development 'for the purpose' of the operator's network because it is for a dual purpose.
6. In the appeals before me, the main parties disagree on whether the proposed call boxes are solely for the purpose of the operator's communications network. I have carefully considered the Counsel's opinion on this matter submitted by the appellant and the description of the proposed call boxes. It is apparent that the form and design of the kiosk is driven by its proposed functionality. The design of all 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. They 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

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

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 box is being considered, and the appellant is not seeking advertisement consent. 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. Whilst I have been provided with examples of decisions where Inspectors have reached a different conclusion on the matter, I can only determine the appeals on the evidence before me. Therefore, the prior approval considerations of siting and appearance must be considered.

7. 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.
8. The Council has made reference in its decision notices to Policies S7, S25, S28 and S41 of the Westminster City Plan 2016 and Policies DES 1, DES 7, and TRANS3 of the Unitary Development Plan (UDP) 2007. Similarly, the appellant has introduced Streetscape Guidance (SG) and Pedestrian Comfort Guidance for London (PCG), both published by Transport for London.
9. 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.
10. Similarly, reference has been made to community safety and security. However, the comments made by the Police as regards the potential for anti-social behaviour appear to be generic and are not related to the individual sites or their context. There is no specific evidence or reason to consider that their presence would encourage crime or anti-social behaviour when taking into account the design of the kiosk. There is natural surveillance of the sites, including by the flow of pedestrians. Additionally, policy and legislative options are likely to be available to tackle criminal and anti-social behaviour, and this matter is not a determining factor in these cases.

Main Issues

11. 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 - 334-348 Oxford Street

12. The proposed call box would be sited on a wide section of pavement, in an area dominated by retail and commercial premises. The proposal would be outside the Mayfair Conservation Area and Harley Street Conservation Area, which have their borders to the south and east of the appeal site.

13. In terms of existing street furniture within vicinity of the site, there are traffic signs/signals, street lighting, street trees, bins and benches. These are all on the roadside of the footway, in a prominent location, in close proximity to the junction of Oxford Street with Vere Street. As such, there is already therefore a proliferation of street furniture within the immediate area. 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, which would be harmful to the character and appearance of the area.
14. The site is located on the pavement of a wide and fairly straight stretch of highway, in line with some of the existing street furniture. Given this, the proposed call box would not significantly intrude on the sight lines of motorists travelling along Oxford Street and there would remain a sufficiently wide unobstructed footway between the development and the building edge for pedestrian movement to not be significantly hindered. Thus, the safe and efficient operation of the highway would not be harmed.
15. Nevertheless, for the above reasons, 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 - 186 Edgware Road

16. The proposed call box would be sited outside 186 Edgware Road, one of a number of shops in a parade along the north-eastern side of the road. In terms of existing street furniture within vicinity of the site, there are street lighting, bins, bicycles hoops and two kiosks. These are all on the roadside of the footway, in a prominent location, in close proximity to the junction of Edgware Road with Crawford Place. As such, there is already therefore a proliferation of street furniture within the immediate area. 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, which would be harmful to the character and appearance of the area.
17. The site is located on the pavement of a fairly straight stretch of highway, in line with some of the existing street furniture. Given this, the proposed call box would not significantly intrude on the sight lines of motorists travelling along Edgware Road and there would remain a sufficiently wide unobstructed footway between the development and the building edge for pedestrian movement to not be significantly hindered. Thus, the safe and efficient operation of the highway would not be harmed.
18. Nevertheless, for the above reasons, 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 B.

Appeal C - 29-31 Edgware Road

19. The proposed call box would be sited outside 29-31 Edgware Road, one of a number of commercial units in a parade along the south-western side of the

road. There is a line of regularly spaced mature street trees and in terms of existing street furniture within vicinity of the site, there are street lighting, bins, bicycles hoops and three kiosks. These features are reasonably spaced out on the footway so that the street scene does not have an overly cluttered appearance. The installation of another call box in this location would not only add to the amount of street furniture, but also reduce the spacing between them. Accordingly, the resultant proliferation of street furniture would be harmful to the character and appearance of the area.

20. The site is located on the pavement of a fairly straight stretch of highway, in line with some of the existing street furniture. I have noted the TfL's concerns about a potential driver loss of visibility/distraction on the approach to the vehicle access for Herts Car rental. However, given the slim design of the call box, its position in relation to existing street furniture, and its set-back from the vehicle access point, the proposal would not significantly intrude on the sight lines of motorists travelling along Edgware Road. The development would reduce the width of the footway between the call box and building frontage to approximately 4 metres. I note that a portion of the remaining width includes a private forecourt. Nevertheless, there would remain a sufficiently wide unobstructed footway for pedestrian movement to not be significantly hindered. Thus, the safe and efficient operation of the highway would not be harmed.
21. Nevertheless, for the above reasons, 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 C.

Appeal D - 15-17 Edgware Road

22. The proposed call box would be sited outside 15-17 Edgware Road, one of a number of commercial units in a parade along the south-western side of the road. In terms of existing street furniture within vicinity of the site, there are street lighting, bins, street trees, bicycles hoops and three kiosks. At the time of my visit there were also 'A' boards in the immediate vicinity of the site, next to the building frontage of the retail store.
23. I acknowledge that the proposed call box would be of a sound functional design and would not necessarily be visually dominating in its own right. However, the siting of the proposal in this location would introduce a further element of clutter to the area. The resultant proliferation of street furniture would be harmful to the character and appearance of the area.
24. The development would reduce the width of the footway between the call box and building frontage to approximately 3.4metres. I note that a portion of the remaining width includes a private forecourt. Nevertheless, given the slim design of the call box and its position in line with some of the existing street furniture, there would remain a sufficiently wide unobstructed footway for pedestrian movement to not be significantly hindered and the proposal would not significantly intrude on the sight lines of motorists travelling along Edgware Road. In the absence of other evidence to the contrary, I consider that the proposal would not cause harm to the safe and efficient operation of the highway.

25. Nevertheless, for the above reasons, 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 D.

Other matter

26. I have taken into account the comments made by interested parties, in so far as they relate to planning matters and each appeal development, and I have noted that the appellant has referred to several 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

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

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

28. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeals A, B, C and D are dismissed.

S Ashworth

INSPECTOR