
Appeal Decisions

Site visits made on 15 June 2020

by P W Clark MA(Oxon) MA(TRP) MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2020

Appeal A Ref: APP/N5660/W/19/3231495

Public highway, adjacent to 409 Kennington Road, London SE11 4DE

- 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 Lambeth.
 - The application Ref 18/04789/G24, dated 5 November 2018, was refused by notice dated 24 December 2018.
 - The development proposed is a public call box.
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Appeal B Ref: APP/N5660/W/19/3231543

Public highway, 412 Kennington Road, London SE11 4PT

- 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 Lambeth.
 - The application Ref 18/04783/G24, dated 5 November 2018, was refused by notice dated 27 December 2018.
 - The development proposed is a public call box.
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Appeal C Ref: APP/N5660/W/19/3231547

Public highway, Kennington Lane adjacent to Leary House, London SE11 5LH

- 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 Lambeth.
 - The application Ref 18/04862/G24, dated 5 November 2018, was refused by notice dated 27 December 2018.
 - The development proposed is a public call box.
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Appeal D Ref: APP/N5660/W/19/3231371

Public highway, Kennington Lane, adjacent to Tesco, London SE11 5RH

- 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 Lambeth.
 - The application Ref 18/04856/G24, dated 5 November 2018, was refused by notice dated 20 December 2018.
 - The development proposed is a public call box.
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Appeal E Ref: APP/N5660/W/19/3231532

Public highway, Lambeth Road, junction with Kennington Road, London SE11 4DE

- 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 Lambeth.
 - The application Ref 18/04819/G24, dated 5 November 2018, was refused by notice dated 24 December 2018
 - The development proposed is a public call box.
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Decisions

1. All five appeals are dismissed.

Procedural matter

2. All five applications were made before 25 May 2019 when the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations came into force. These regulations amended the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) so as to remove permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator but with transitional arrangements for cases already in hand. Thus, these five appeals are treated as if the changes to the GPDO had not been made.

Main Issues

3. All five appeals were refused prior approval on the grounds of the effect of the proposals on character and appearance of the street scene and on anti-social or criminal behaviour. In addition, refusals of appeals A, C, D and E make reference to effect on highway safety (specifically, pedestrian safety in the case of appeal D). Refusals of appeals A and C make reference to effects on nearby heritage assets. However, under the terms of the GPDO, only the siting and appearance of the apparatus can be taken into consideration.
4. Not a reason for refusal in any of the five cases but implicit in the appellant's comments with reference to the New World Payphones judgment of February 2019; [2019] EWHC 176 (Admin) in the statement of case for all five appeals is a questioning of the eligibility of all five proposals for consideration under the terms of the GPDO. That judgment held that a development which is partly for the purpose of an operator's network, and partly for some other purpose, is not development "for the purpose" of the operator's network, precisely because it is for something else as well.

5. Also not a reason for refusal in any of the five cases but adduced in the Council's appeal statement for appeal E is a questioning of the eligibility of the appeal for consideration under the terms of the GPDO because Article 3(6) of the GPDO provides that the permission granted by Schedule 2 does not, except in relation to development permitted by Classes A, B, D and E of Part 9 and Class A of Part 18 of that Schedule, authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons.
6. For the above reasons, the issues in these appeals are whether or not the proposal in appeal E would create an obstruction to the view of persons using any highway used by vehicular traffic so as to be likely to cause danger to such persons and so be excluded from consideration under the terms of the GPDO and, in all five appeals, whether or not the proposal in each appeal would be solely for the purpose of the operator's electronic communications network and, if so, the effects of the siting and appearance of each proposal on the character and appearance of the area and anti-social or criminal behaviour. In the case of appeals A, C, D and E, highway safety is also an issue in any event and, for appeals A and C there is also the issue of the effect of the siting and appearance of the proposal on the significance of a nearby designated heritage asset to take into account.

Reasons

Purpose

7. All five appeals are accompanied by a Counsel's opinion. This draws on a written description of the design of the "Max 2" call box. The opinion asserts that none of the Maximus appeal cases include any advertising features and that the proposed development includes no elements that are there for the purpose of advertising.
8. It is correct that the written description of the design of the "Max 2" call boxes appended to the Counsel's opinion in each appeal case contains nothing which can be identified as included for the purpose of advertising. But, each of the five proposals before me includes drawings of the kiosks. One of the drawings in each appeal is a three-dimensional illustration of the proposal which shows an advertising display on one side of the unit (in the illustrations, these advertise the qualities of the Max 2 kiosk itself).
9. Each appeal has a second drawing displaying the drawing number MAX 2 ASSEMBLY Rev C. They show on one side of the unit (in the place where an advertising display is indicated on the previous three-dimensional drawing) a visual area 1100mm x 1700mm and labelled "non-illuminated display panel".
10. I therefore conclude that the visual area which is included as an element of each proposal in all five cases before me is an element included for the purposes of a non-illuminated display of what would amount to an advertisement as defined in the Act. The drawings before me therefore indicate elements included for the purposes of advertising. It follows that the proposals in all five appeal cases are partly for the purpose of an operator's network, and partly for some other purpose. Consequently, the proposal in

each appeal is not development “for the purpose” of the operator’s network, precisely because it is for something else as well. None of the proposals in each appeal should have been entertained as a prior notification application.

11. But they were entertained, registered as such and a decision was issued in each case. Those decisions are now the subject of appeals which are before me and so I give my conclusions on the issues they raise even though such consideration cannot override my findings that each appeal relates to a proposal which does not fall within the purview of permitted development.

Appeal A

12. This location would be in front of the entrance to offices adjacent to a grocery store, in front of which is a bus shelter containing an advertisement hoarding. Opposite is a post office, a restaurant and empty former bank premises. There is already a certain amount of street clutter, to which this proposal would add, as noted in a previous appeal decision for a similar proposal (APP/N5660/W/18/3213329) but the character of the area is already commercial where a certain amount of clutter is expected and so the provision of a public call box would not be out of place.
13. The Kennington Park Conservation Area, St Mark’s Conservation Area and the listed Kennington Park Lodge and St Mark’s Church are all experienced within the setting of this heavily trafficked commercial area and so I agree with the conclusion reached in the earlier appeal decision relating to this site that the proposal would have a neutral effect on the significance of those heritage assets.
14. The location is reported to be a crime hot spot but there is no information to show how the particular siting or appearance of this call box as distinct from the siting or appearance of any other call box would exacerbate criminal or antisocial activity. I note the advice which describes how free call boxes facilitate drug-related crime but that appears not to be a consequence of the siting or appearance of this proposal which I am considering but rather a consequence of the operation of a free telephony service which is not a matter of siting or appearance. The operator has a licence to provide such a service.
15. The siting would however be a few metres in front of one of the traffic lights controlling the junction of Kennington and Kennington Park Roads. Although the call box would not be positioned in the line of view of drivers close to the junction, there is, as the appellant’s location plans confirm, a slight curvature in the highway which suggests that it would compete with the traffic lights in drivers’ view from a little further away.

16. I therefore conclude that, even if this proposal had been solely for the purposes of the operator’s network, I would have dismissed this appeal in any event because of the effects of the siting of the public callbox on highway safety.

Appeal B

17. This location would be across the road from appeal A and so, the considerations are very similar except for the issues of highway safety, which would not apply in this case as traffic would not be approaching the junction on this side of the road and of the setting of heritage assets, which is not raised as a reason for refusal. As a previous appeal decision has noted

(APP/N5660/W/18/3212502), there is already a certain amount of street clutter, to which this proposal would add, but the proposal would take its place in an orderly line along the pavement's edge and so, I do not find it harmful.

18. The location is reported to be a crime hot spot but there is no information to show how the particular siting or appearance of this call box as distinct from the siting or appearance of any other call box would exacerbate criminal or antisocial activity. I note the advice which describes how free call boxes facilitate drug-related crime but that appears not to be a consequence of the siting or appearance of this proposal which I am considering but rather a consequence of the operation of a free telephony service which is not a matter before me. The operator has a licence to provide such a service.
19. I therefore conclude that, had this proposal been solely for the purposes of the operator's network, I would have allowed this appeal but, as the proposal does not fall within the terms of the GPDO for the reasons stated earlier, the appeal is dismissed.

Appeal C

20. Although Kennington Lane as a whole has a mixed character, this particular location is in front of the communal grounds of a housing estate and beneath the line of a row of street trees. There is a commercial storage building on the opposite side of the road but the dominant character of this particular stretch of footway is not commercial and would be adversely changed, to its detriment, by the introduction of a public call box.
21. In the next block along to the west is a cluster of listed buildings connected with St Peter's Church but the degree of separation is such that the siting and appearance of this proposal would not affect the setting of the listed buildings or any appreciation of their significance.
22. The location is reported to be a crime hot spot but there is no information to show how the particular siting or appearance of this call box as distinct from the siting or appearance of any other call box would exacerbate criminal or antisocial activity. I note the advice which describes how free call boxes facilitate drug-related crime but that appears not to be a consequence of the siting or appearance of this proposal which I am considering but rather a consequence of the operation of a free telephony service which is not a matter before me. The operator has a licence to provide such a service.
23. The location would be on the approach to a traffic light controlled junction and would be sufficiently close to it to distract a driver's attention from the operation of the traffic lights. I also concur with the view expressed in an earlier appeal decision for a similar proposal (APP/N5660/W/18/3213336) that the proposal would adversely affect the visibility of approaching traffic for pedestrians waiting to cross at the junction.
24. I therefore conclude that, even if this proposal had been solely for the purposes of the operator's network, I would have dismissed this appeal in any event because of the effects of the siting of the public callbox on the character and appearance of the locality and on highway safety.

Appeal D

25. At the time of my visit, this location was concealed behind the hoardings of a redevelopment site. There is no information before me concerning the layout of the proposed redevelopment and so no information by which to judge whether the siting and appearance of this appeal proposal would be acceptable, or even feasible, in the circumstances which would apply on completion of the development currently in progress.
26. I therefore conclude that, even if this proposal had been solely for the purposes of the operator's network, I would have dismissed this appeal in any event because the effects of the siting and appearance of the public callbox cannot be ascertained.

Appeal E

27. This proposal would be sited on a wide pavement in front of a small commercial precinct at the junction of Lambeth and Kennington Roads. There is a certain amount of street clutter nearby, including two telephone kiosks of a rival operator and two bus shelters with advertising hoardings on the Kennington Road frontage and a further bus shelter with advertising hoarding and litter bin on the Lambeth Road frontage but seemingly less than is noted in a previous appeal decision for a similar proposal (APP/N5660/W/18/3212903) in the same location. Even with the addition of the current appeal proposal, the effect would be not inappropriate to the commercial nature of the precinct.
28. The proposal would be located on the footway adjacent to the arm of the junction used by traffic leaving the junction and so would not interfere with traffic sightlines or otherwise present an undue safety hazard. It is not therefore precluded from consideration through the operation of article 3(6) of the GPDO.
29. The location is reported to be a crime hot spot but there is no information to show how the particular siting or appearance of this call box as distinct from the siting or appearance of any other call box would exacerbate criminal or antisocial activity. I note the advice which describes how free call boxes facilitate drug-related crime but that appears not to be a consequence of the siting or appearance of this proposal which I am considering but rather a consequence of the operation of a free telephony service which is not a matter before me. The operator has a licence to provide such a service.
30. I therefore conclude that, had this proposal been solely for the purposes of the operator's network, I would have allowed this appeal but, as the proposal does not fall within the terms of the GPDO for the reasons stated earlier, the appeal is dismissed.

P. W. Clark

Inspector