
Appeal Decisions

by M Scriven BA (Hons) MSc CMgr MCIHT MCMI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2020

Appeal A Ref: APP/V5570/W/19/3231254

Public highway, 235 St John's Street, London EC1V 4NG

- 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 Islington.
 - The application Ref P2018/3678/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
 - The development proposed is the installation of a public call box
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Appeal B Ref: APP/V5570/W/19/3231237

Public highway, 264 St John's Street, London EC1V 4PE

- 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 Islington.
 - The application Ref P2018/3660/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
 - The development proposed is the installation of a public call box
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Appeal C Ref: APP/V5570/W/19/3231246

Public highway, Goswell Road adjacent to King's Square Gardens, London EC1V 7ET

- 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 Islington.
 - The application Ref P2018/3671/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
 - The development proposed is the installation of a public call box
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Appeal D Ref: APP/V5570/W/19/3231256

Public highway, 80 Old Street, London EC1V 9AZ

- 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 Islington.

- The application Ref P2018/3676/PRA, dated 30 October 2018, was refused by notice dated 18 December 2018.
 - The development proposed is the installation of a public call box
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Decision

1. Appeals A, B, C and D are dismissed.

Procedural Matters

2. These appeals concern individual proposals for the installation of individual public call boxes of the same design (Drawing Title MAX 2 ASSEMBLY REV C), referred to as Max 2 by the main parties, within the pavement area of the public highway at four locations in the London Borough of Islington. I have dealt with each appeal on its own individual merits although bearing in mind the main issue in each appeal I have dealt with them together in my reasoning to avoid duplication.
3. The appellant is a licenced electronic communications code operator who could have benefited from permitted development rights for public call boxes erected as communications apparatus falling in accordance with Schedule 2, part 16, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), subject to the prior approval requirements under paragraph A.3. Following the appellant's applications to the Council under these provisions it was determined that prior approval was required for the siting and appearance of the communications apparatus.
4. On 25 May 2019, the GPDO was amended with the effect of removing permitted development rights to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, Part 5 of the amending Regulations¹ provides that where an appeal has been made within six 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 of the GPDO continues to have effect in relation to a public call box as if the amendments made to the GPDO by the Regulations had not been made. This is the position in respect of all the appeals in this letter
5. All of the Notices of Refusal in these appeals issued in December 2018 stated that the reasons for refusal related to siting and appearance. The Council did not state in their reasons that the applications fell outside of Part 16 of the GPDO.
6. However, since then the decision of the Court in respect of Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin); EWCA Civ 2250 concerning prior approval for telephone call box development was subsequently issued on 5 February 2019 and has been subject to representations in these appeals by the appellant, including Counsel's opinion. In light of the Westminster judgement both the Council and appellant were given opportunity to comment on whether the judgement had any bearing on the appeals, specifically whether or not the development in question would be

¹ Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019

considered as having a dual purpose, and I have taken their views into account in reaching my decision.

7. The Council confirmed that had the Court judgement have occurred prior to the Council making their decision an additional reason for refusal would have been given in each case, specifically that the proposed development would not comply with Part 16 of the GPDO. Specifically, that the proposed structure would serve a dual purpose as telephone kiosk and an advertisement, as such not being permitted development and requiring planning permission. The appellant referred to information as previously submitted as part of their appeals.
8. Amongst other matters, the Westminster judgement confirms that an assessment as to whether a telecommunications apparatus falls within the scope of Part 16, Class A of the GPDO should be made before matters pertaining to siting and or appearance are considered.
9. I have not undertaken site visits, but instead made a desk-based assessment of the proposals on the evidence before me, to determine whether or not the proposal is solely for the purpose of the operator's electronic communications network.

Main Issue

10. Therefore, the main issue in each appeal is whether or not the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

11. As explained above, each of the proposals concerns the installation of a 'Max 2' public call box, of the same design at the respective appeal locations. The Counsel's opinion examines the implications, if any, of the Westminster judgement, specifically in relation to the Max 2 public call box.
12. The opinion argues there are material differences between the New World call boxes in the Westminster case and the Max 2. Specifically, that the former incorporated an advertising panel and in built facility to illuminate and display advertisements which the latter does not. The opinion also states the proposals do not include any advertising features. Therefore, arguing that the conclusion of a dual purpose in the Westminster case can have no application to the facts in these appeals.
13. In my consideration of the appeal I have had particular regard to the application plans submitted to assess any apparent dual purpose. The Drawing Titled 'MAX 2 Assembly Rev. C' dated 06.09.2018 details the design of the proposed call box. There is clear reference to a 'Non-illuminated display panel' and an additional reference to a 'Visual Area' with a width of 1100mm and height of 1700mm. Some iconography is detailed in the drawing however no information is provided to explain the appearance of the space described as 'Visual Area' or what the panel would display. Similarly, albeit for illustrative purposes only, the Drawing titled 'Maximus Networks Ltd Public Call Box Design' clearly shows the panel is capable of housing what appears to be poster style displays.
14. The Westminster judgement is clear that where development is capable of a dual purpose incorporating the operator's network, it is not solely for network

operations. Therefore, I consider that the information provided confirms that in addition to the rear panel being used to access the internal equipment of the call box for maintenance (as described in Counsel's opinion Annex 1), there is an inbuilt facility which could be used for display purposes without modification to the structure.

15. I have considered the previous appeal decisions provided by the appellant dated 24 October 2012 and 13 May 2013 (APP/X5210/A/12/2178982 and APP/X5990/A/12/2187244 respectively). However, no accompanying detail is provided regarding the designs of the specific appeal proposals to support a contrary view to the above. Similarly both decisions predate the Westminster case and focus upon the rationale of siting and appearance.
16. Accordingly, on the basis of the information provided, it is reasonable to determine that appeal proposals are not solely for the purpose of the operator's electronic communications network, they have a dual purpose and as such fall outside Schedule 2, Part 16, Class A of the GPDO 2015. Therefore, I have not proceeded to consider matters relating to the siting and appearance of the public call box in each appeal.

Conclusion

17. For the reasons given above, I conclude that the appeals should be dismissed.

Matthew Scriven

INSPECTOR