



Appeal Decision

Site visit made on 26 July 2022

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2022

Appeal Ref: APP/X5990/W/19/3231078

Public Highway, 78 Oxford Street, London W1D 1BT

- 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 & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of the City of Westminster Council.
 - The application Ref 18/09384/TELCOM, dated 2 November 2018, was refused by notice dated 18 December 2018.
 - The development proposed is described on the application form as 'a public call box'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). 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, Schedule 2, Part 16, Class A continues to have effect as if the amendments made to the GPDO by the 2019 Regulations had not been made. I have therefore considered this appeal under these transitional arrangements.
3. 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 development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
4. The main parties have both made representations with regard to the High Court ruling of Westminster CC vs SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin). The Council states that the proposed call box is designed for the display of advertisements and alleges that it is therefore not permitted development.
5. However, based on the evidence submitted by the appellant on the design and function of the proposed development, I conclude that advertising does not

form part of the development as proposed. Accordingly, the proposed development would not have a dual purpose, in contrast to the developments which were subject to the aforementioned Westminster Judgement. It therefore falls within the ambit of Schedule 2, Part 16 of the GPDO (as amended), subject to any relevant exception, limitation or condition specified therein.

6. Another of the Council's reasons for refusal indicates that the proposed development would be 'premature', given 'the City Council's proposed Oxford Street District improvements which are the subject of public consultation (until 16 December 2018)'. However, I have not been provided with any substantive evidence to indicate the outcome of this consultation. Nonetheless, I have considered the effect of the proposed development on character and appearance and ease of pedestrian movement under the main issue in any case.
7. The appellant and the Council have both referred to various appeal decisions and judgements and I have had regard to them in considering this appeal.

Planning Policy

8. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). Furthermore, in April 2021 the Council adopted the City Plan 2019-2040 which has superseded the previous development plan policies cited in the Council's reasons for refusal. The London Plan was also adopted in March 2021, replacing the previous version.
9. Both parties were invited to make representations to local and national planning policy changes which have occurred since the application was refused by the Council. The Council indicates that the following City Plan policies are relevant to the reasons for refusal: 2 (West End Retail and Leisure Special Policy Area), 24 (Sustainable Transport), 25 (Walking and Cycling), 28 (Highways Access and Management), 38 (Design Principles) 39 (Heritage), 40 (Townscape) and 43 (Public Realm). The appellant has not referred to any of the new London Plan Policies despite referring to the previously adopted policies (which have now been replaced).
10. Nonetheless, the principle of (and need for) the development is established by the GPDO 2015 and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard to be given to the development plan. I have therefore only had regard to the policies of the development plan and the revised National Planning Policy Framework (2021) insofar as they are a material consideration relevant to matters of siting and appearance.

Main Issue

11. The main issue is 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

12. The proposed development is for a public call box with a height of approximately 3.1 metres and an approximate width of 1.1 metres. It would include a non-illuminated display panel and photovoltaic roof panels above. It

would be located on the footway approximately 0.45 metres from the carriageway.

13. Oxford street is primarily characterised by extensive retail development which typically fronts the street at ground floor level. The footways are very wide and they accommodate a large number of pedestrians whom frequent the area. There are many sporadically located existing items of street furniture, but these are typically subordinate to the surrounding buildings. There are two existing phone boxes located either side of the appeal site.
14. Whilst the scale of the development would be modest in relation to the surrounding buildings, it would completely dominate this side of the footway and rise significantly above pedestrians utilising the footway. The proposed solar panels would increase the prominence of the structure in the street scene, further exacerbating the visual harm caused. As a result, the proposed development would not be in keeping with the far more spacious character of the footway.
15. Whilst I appreciate that the design has been arrived at as a result of considerations including functionality and the appellant's attempts to minimise the impact on pedestrian flows, the appearance of the development would nonetheless be incongruent, given the siting of the proposed development in a prominent location in the street scene. The fact that there are other phone boxes nearby, including those which are adjacent to the appeal site, does not mitigate this harm. If anything, the presence of the existing phone boxes would exacerbate the harmful visual impact of the development, with a significant proliferation of street furniture within a relatively small area.
16. The appeal site is located outside of but in close proximity to the East Marylebone, Hanway Street and the Soho conservation areas, all of which include parts of Oxford Street in close proximity to the appeal site. However, the visual harm caused by the appearance of the development would be limited to the area immediately surrounding the appeal site. As such, whilst there would be a harmful impact on the character and appearance of the immediately surrounding area, there would no be harm to the aforementioned CAs which are slightly further afield.
17. The appellant has referred to various appeal decisions where the matter of character and appearance was considered. However, the relevance of these decisions is very limited given that the conclusions reached would have been based on the site-specific circumstances which differ from those that are relevant to this appeal.
18. Given the siting of the proposed development between existing phone boxes, it is unlikely that there would be any adverse impact on pedestrian movement over and above the existing situation. The pavement in this location is narrower than elsewhere but the evidence before me demonstrates that there would not be any significant reduction in the existing useable width. Therefore, the development would not lead to any adverse impact on pedestrian movement or highway safety.
19. In summary, whilst there would be no significant harm to pedestrian movement, the siting and appearance of the proposed development would lead to a significant harmful visual impact on the appeal site and immediately surrounding area.

Conclusion

20. For the reasons given above, the appeal is dismissed.

Luke Simpson

INSPECTOR