



Appeal Decision

Site visit made on 19 February 2019

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th August 2019

Appeal A: Ref: APP/X5210/W/18/3211168

23 Tottenham Court Road, London W1T 1BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application, Ref. 2018/0310/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal B: Ref: APP/X5210/W/18/3211169

39 Tottenham Court Road, London W1T 2AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application, Ref. 2018/0311/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal C: Ref: APP/X5210/W/18/3211171

80-85 Tottenham Court Road, London W1T 4TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application, Ref. 2018/0312/P, dated 18 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.
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Appeal D: Ref: APP/X5210/W/18/3211495

145-149 Tottenham Court Road, London W1T 7NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
- The application, Ref. 2018/0331/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
- The development proposed is Prior Approval for Siting and Appearance: Installation of Public Call Box.

Decisions

1. **Appeals A & B** are dismissed. **Appeals C & D** are allowed.
2. **Appeal C:** The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 16, Class A to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), in respect of development by a telecommunications code system operator for the siting and appearance of electronic communications apparatus (a telephone call box) on the Pavement at 80-85 Tottenham Court Road, London W1T 4TE in accordance with the terms of the application Ref. 2018/0312/P dated 18 January 2018, and the plans submitted with it comprising 2 No. OS based Site plans with grid reference of siting; Illustration: 'Maximus Networks Ltd – Telephone kiosk Design'; Drawings 01-05 showing Plan, Roof Plan, Front Elevation; Side Elevation; Rear Elevation; Photograph of pavement with position of proposed development indicated.
3. **Appeal D:** The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2 Part 16, Class A to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), in respect of development by a telecommunications code system operator for the siting and appearance of electronic communications apparatus (a telephone call box) on the Pavement at 145-149 Tottenham Court Road, London W1T 7NE in accordance with the terms of the application Ref. 2018/0331/P dated 21 January 2018, and the plans submitted with it comprising 2 No. OS based Site plans with grid reference of siting; Illustration: 'Maximus Networks Ltd – Telephone kiosk Design'; Drawings 01-05 showing Plan, Roof Plan, Front Elevation; Side Elevation; Rear Elevation; Photograph of pavement with position of proposed development indicated.

Preliminary and Procedural Matters

4. During the course of these appeals the decision of the Courts in respect of *Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)* was issued on 5 February 2019 concerning prior approval for telephone call box development. The main parties were given the opportunity by PINS to provide comments on the relevance of this judgment to their cases. I have taken these into account during the determination of these appeals. ^[1]_{SEP}
5. In this regard, the main focus as to the potential for a possible dual use including advertising is the toughened glass door on the rear face of the call box. This is hinged on one side to allow it to be opened in order to gain access to the service panel for regular checking and maintenance. However, from my reading of the appellant's technical description and the plans before me in these appeals, I am of the view that the detailed design and materials do not clearly facilitate a dual purpose. They appear as being solely for the purpose of the operator's electronic communications network and accordingly would fall within the permitted development rights regime under the provisions of Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'). In all four of these appeals therefore, only the construction of the kiosks is under consideration and not a potential dual purpose for advertisements. ^[1]_{SEP}

6. The GPDO requires the Local Planning Authority and therefore the Secretary of State on appeal to assess the proposed development solely on the basis of its siting and appearance. Matters such as the principle of development and the need for the facilities are not issues that can be taken into account. I have therefore made my Decisions with regard to the siting and appearance of the proposed development in accordance with the GPDO. ^[1]_{SEP}
7. The Council has referred to development plan policies in its reasons for refusal. 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 and although not determinative, I have had regard to Policies A1 (Managing the impact of development), C5 (Safety and Security), C6 (Access for all), D1 (Design), G1 (Delivery and Location of Growth) and T1 (Prioritising walking, cycling and public transport) of the London Borough of Camden Local Plan 2017 only in so far as they are a material consideration relevant to matters of siting and appearance.
8. The National Planning Policy Framework 2019 ('the Framework') sets out Government policy on telecommunications in Section 10: 'Supporting High Quality Communications'. This includes a requirement that '*Planning policies and decisions should support the expansion of electronic communications networks*' and that '*Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system*'. I have had regard to this policy in reaching my Decisions.
9. I have additionally taken into account the representations made by third parties, including local residents as well as organisations both within and outside the Council, insofar as they do not address matters precluded for consideration by the GPDO and the Framework.

Background and Main Issues

10. All of the appeals are for sites in Tottenham Court Road in Central London, which runs on a south east / north west alignment between the Oxford Street / New Oxford Street junction to the south and Euston Road to the north. The proposed sitings for Appeals A & B are in the first third of the road closest to Oxford Street / New Oxford Street; Appeal C is just over halfway along its length, and Appeal D close to Euston Road. The distance between Appeals A and D is about 0.8km (half a mile).
11. The Council has refused to grant approval for the same four reasons. The main issues in all four appeals are the effect of the siting and appearance of the call box on (i) the character and appearance of the street scene of Tottenham Court Road and (ii) pedestrian safety and convenience. I have addressed the submissions relating to community safety and security and the accessibility of the call box for wheelchair users in 'Other Matters' below.

Reasons

Effect on the Street Scene: Appeal A: 23 Tottenham Court Road

12. This section of the road is effectively the area between Sainsburys to the north west and Stephen Street to the south east. At approximately 11m in depth the extent of the pedestrian area is my view generous, even allowing for the fairly high pedestrian flows.

13. Nonetheless within this area there are two lines of street furniture and these have the effect of to some extent countering the perception of space by dividing the pavement area into smaller sections which in turn increases the visual impact of each line of street furniture.
14. The proposed call box would be positioned in the line of street furniture closest to the kerb and would be read in close proximity with a pair of older style phone kiosks. Furthermore, along the same alignment in this section of the road are other such kiosks and a freestanding advertising sign.
15. In these circumstances I consider that the proposed call box would constitute a harmful addition to the existing clutter of this part of the street scene. Moreover, whilst I have acknowledged that the principle of development and the need for the facilities are not issues that can be taken into account, I consider that an additional call box in a position where there are already so many nearby would be perceived as somewhat incongruous by passers-by. This is not a comment arguing that there would be unnecessary or unwarranted competition, but an observation as to the visual impact of the structure in cumulative terms.

Effect on the Street Scene: Appeal B: 39 Tottenham Court Road

16. The site in this case is within the street block bounded by Percy Street to the south east and Windmill Street to the north west and is one block away from the stretch of road in Appeal A, with similar characteristics of a generous pavement and two lines of street furniture.
17. Whilst in this instance the appeal site would occupy a mid-pavement as opposed to a kerb edge position, the constraints on the siting of additional paraphernalia for the public's use are essentially the same. The call box would be sited outside the HSBC bank and at varying depths in the pavement opposite the double frontage there are already wooden seats, litter bins and three older style phone kiosks, one pair and one individual.
18. Slightly nearer Windmill Street are more seats and bins, another pair of kiosks, a bus stop and shelter, with the latter having prominent advertising. Most significant of all is the bulky green retail kiosk. Although mature street trees offer some visual relief, I reach the same conclusion for the proposed call box in front of No. 39 as I do for that envisaged in front of No. 23 and summarised in paragraph 15 above.

Effect on the Street Scene: Appeal C: 80-85 Tottenham Court Road

19. The siting in this case is alternatively described as being outside 86 Tottenham Court Road, which adjoins Lloyds TSB Bank. This stretch of the road, ending at Howland Street to the north west is relatively uncluttered with only a retail outlet of temporary construction forming a significant structure within the pavement area.
20. There are only two old style telephone kiosks, and these are separated by a considerable distance with their respective positions close to each end of the street block. Given the spacious setting of this section of pavement I see no reason why the proposed call box would comprise clutter or be harmfully intrusive. The call box would be sited close to the kerb edge (other than as a result of any subsequent pavement widening) and the nearest mature tree. And notwithstanding the Council's criticisms, I regard its design as being

acceptable and appropriate for its context of a commercial environment in the west end of London. With its open and extensively clear glazed form it is far removed from the poor quality phone kiosks that already feature in Tottenham Court Road and throughout Central London.

Effect on the Street Scene: Appeal D: 145-149 Tottenham Court Road

21. The appeal site lies on the eastern side of the road close to Grafton Way within the street block stretching to Beaumont Place. Existing street furniture is for the most part limited in scope and small scale. And whilst the Council argues that this in itself is a reason not to increase the number of structures on the pavement, I consider that there is a balance between on the one hand clutter that is harmful to visual amenity, and on the other hand the judicious siting of facilities that the public might reasonably expect to find on pavements in a busy shopping street.
22. In my assessment the addition of the call box on this particular site would maintain this balance and would not draw the eye as being a harmful or intrusive addition to the pavement and the street scene.

Effect on Pedestrian Safety and Convenience: Appeals A-D

23. Having had regard to the evidence from the main parties to the appeal and the views of third parties, I consider that with the exception of the effect on the street scene there is sufficient commonality in respect of this issue for me to deal with the appeals together.
24. The appellant has submitted evidence that includes an analysis of pavement width and anticipated pedestrian flow, said to be based on best practice guidance in the TfL document 'Pedestrian Comfort Guidance 2015'. In this context I have also had regard to the Council's view that an application of this guidance would preclude additional telephone equipment. However, all four sites are in Tottenham Court Road and would be positioned on wide, in some cases very wide, pavements. These pavements are a characteristic of the road and at my visit roadworks were underway at more than one site to widen some of the sections of lesser width.
25. On the basis of individual assessments on my visit, I consider that the construction of a call box on the pavement is an additional item of street furniture that by definition must to some extent reduce the amount of space available for movement, albeit limited. However, notwithstanding the Council's views, none of the proposed sitings in these appeals would be such as to be a harmful inconvenience to pedestrians, either in terms of the general flow of movement or in the case of particular desire lines or access to existing facilities.
26. This conclusion is in part because in all cases the siting aligned with existing items of street furniture and in some cases also street trees, but also because of the considerable extent of existing unobstructed pavement in relation to the likely footfall in the area of the call box, even allowing for much heavier flows than I personally observed.

Other Matters

27. The Council also included refusal reasons relating to community safety and security and the accessibility of the call boxes wheelchair users. However,

whilst I have noted that such matters have been referred to in a number of other appeal decisions, I am doubtful whether such considerations clearly fall within the restriction of consideration to 'siting' and 'appearance' as set out in the GPDO.

28. In the event that despite my reservations I am wrong and they do, the comments made by the Metropolitan Police as regards the potential for anti-social behaviour appear to be generic in nature and not related to the particular individual siting of any of the public call boxes in these appeal applications. Furthermore, such comments appear to run counter to the prior approval principle embodied within the GPDO. And with other policy and legislative options available to tackle criminal and anti-social behaviour, including rough sleeping, I consider that I should attach only limited weight to these arguments.
29. As regards wheelchair accessibility, the Council has made a number of detailed criticisms as to the usability of the call box for people with disabilities. However, the appellant says that the call box was designed in consultation with user groups and specialists in design for the mobility impaired. And the argument that the detailed design could provide further improvements does not in my view carry sufficient weight to preclude the proposal, particularly having regard to the fact that the call boxes are not applications for planning permission, with that appraisal procedure offering much wider scope for amendments to proposals.

Overall Conclusions

30. For the reasons set out above, I conclude (on balance in all cases) that (i) the installation of public call boxes on the pavements at 23 and 39 Tottenham Court Road (Appeals A & B) would have an unacceptably harmful effect on the character and appearance of the street scene and that the appeals should be dismissed, and (ii) the installation of public call boxes on the pavements at 80-85 & 145-149 Tottenham Court Road (Appeals C & D) would not unacceptably harm the character and appearance of the street scene and that the appeals should be allowed and prior approval granted.

Conditions: Appeals C & D

31. Any approval granted for the installation of a public call box under Article 3(1) and Schedule 2, Part 16, Class A is subject to conditions set out in paragraphs A.2(2), A.3(9) and A.3(11) and which specify that the development must, except to the extent that the Local Planning Authority ('the LPA') otherwise agree in writing, be carried out in accordance with details submitted with the application; must begin no later than the expiration of 5 years beginning with the date on which the LPA received the application, and must be removed as soon as reasonably practicable after it is no longer required for electronic communication purposes and the land restored to its condition before the development took place.

Martin Andrews

INSPECTOR