metropolis planning and design

Statement of Case

90 Tottenham Court Road, London W1T 4TJ

London Borough of Camden

On behalf of
Maximus Networks Limited

03/06/19
Job Ref: 3074

Practice Information

Metropolis PDG Ltd
4 Underwood Row
London N1 7LQ

T: 020 7324 2662
info@metropolispd.com
www.metropolispd.com

Directors
Greg Cooper
Paul O'Neill

Associates
David Symonds
Ian Conneely

TABLE OF CONTENTS

APPENDICES

1.0 INTRODUCTION

1.1 On behalf of our Client, Maximus Networks Ltd ("The Appellant"), Metropolis Planning and Design have been instructed to prepare this Appeal against the withholding/refusal of Prior Approval for Development in accordance with Installation of Electronic Communications Apparatus on the Highway by an electronic communication code operator pursuant to The Town and Country Planning (General Permitted Development) Order 2015, Part 16 of Schedule 2 (as amended) ('the GPDO') and the Communications Act 2003, section 106.

1.2 This Appeal is submitted under Section 78 of the Town and Country Planning Act 1990 (as amended) in respect of the decision to withhold Prior Approval for application ref: 2018/5562/P ("The Application") by the London Borough of Camden ("The Council / the Local Planning Authority") on the 20th December 2018.

1.3 The appeal proposal is for a public call box in the following location:

90 Tottenham Court Road, London W1T 4TJ

1.4 A full copy of The Application is attached at Appendix 1.

1.5 The Appellant has been granted powers to install public call box as an Electronic Code Systems Operator, and permission 'in principle' for the development is granted by Part 16 of Schedule 2 of the GPDO. Schedule 2 Part 16 A(3)[1] specifies that only matters of 'appearance' and 'siting' require the Prior Approval of the Local Planning Authority, and this appeal is therefore limited in scope to the consideration of these two issues. Many of the usual considerations pursuant to a planning application are not subject to debate in this instance given the provisions of the GPDO which allows the development 'in principle'.

1.6 The Court of Appeal has held *(Murrell v Secretary of State for Communities and Local Government and Broadland District Council* [2010] EWCA Civ 1367*),* where development is permitted by the Order[2], the principle of development is not at issue. The requirements of the Prior Approval process are therefore analogous to reserved

[1] Schedule 2 of the GPDO *PART 16 Communications Class A – electronic communications code operators:*
[2] Attached at Appendix 5

matters following the grant of planning permission, and in this instance, limited in scope solely to matters of siting and appearance. For the avoidance of doubt, matters of 'need' for the call box or competition within the sector are not material considerations. In fact, the National Planning Policy Framework (NPPF) is explicit in Para 116 that these issues should not be considered in the determination of applications by Electronic Communications Code Operators.

1.7 This principle has now been reinforced by the High Court in *Westminster City Council v Secretary of State for Housing, Communities and Local Government and New World Payphones Limited*[3] [2019] EWHC 176 (Admin), where Ouseley J held, contrary to the submissions of the local planning authority, that "the grant of permission in the GPDO, with its limited range of material considerations, precludes an argument about whether electronic communications networks, and the facilities required for their use, which would include kiosks in the street for public use, are "needed" in the public interest."[4]

1.8 He also rejected the local planning authority's "submission that the condition imposed upon the grant of prior approval, that the kiosk be removed when no longer required, imports words into the test for prior approval that the kiosk must be "required for the purpose of" the operator's network, and that that thereby imports a "need" test. The text of Class A was intended to be quite simple, and would not have been intended to import some objective "need" test, or to involve the local authority questioning precisely why the operator "required" the kiosk, and judging how good a reason that was. This would contradict the essential feature of the GPDO which is to narrow the range of considerations which a decision-maker has to consider, in order to streamline certain aspects of the planning system."

1.9 Finally, the judge held that unless "the NPPF is relevant to considerations for decision, siting and appearance, it is legally immaterial, whatever it says itself…"Need" is resolved by the general permission"[5].

1.10 The Application Submission itself[6] sets out the benefits of the provision of new public call boxes, the background to the site, the appearance of the public call box and its specific siting on the highway. It is however, considered appropriate to revisit the

[3] See Appendix 5
[4] See Appendix 4 paragraph 49 of the judgment
[5] See Appendix 4 paragraph 52 of the judgment
[6] See Appendix 1

parameters for the consideration of Prior Approval, recent judgements and decisions that have defined the scope of what may be considered material to the granting of Prior Approval under the provisions of the GPDO.

1.11 Notwithstanding the reasons for refusal, in this particular instance, the following sections of this Statement of Case also deal with the issues of appearance and siting in turn and set out the planning policy tests that The Appellant has adopted in assessing the suitability of the appearance and siting of the appeal proposal. This is followed by an examination as to why Prior Approval should be allowed for the appeal proposal.

1.12 In respect of the appearance of the public call box, the Appellant has considered the subjective matter of the design of the public call box itself and its location within street scene. The siting of the proposal has been considered in terms of its impact on the movement of pedestrians and other traffic.

1.13 For the Appellant's public call box, the guiding principle in terms of the design has been that form must follow function as elegantly and as simply as possible.

1.14 The Appellant is seeking to deliver a new network of public call boxes. There is therefore a legitimate expectation that there will be uniformity of design for the public call box itself across the network. There are also parameters set by the GPDO in terms of size, which have been closely adhered to and the Ofcom requirements of accessibility, openness and simplicity of use and maintenance. The Appellant's public call box, and the locations selected, rely upon sound functional design, using high quality materials to ensure that the public call box is not visually intrusive or dominant, to the point where it could be considered 'clutter' and will be consistent with the general design of other street furniture, in order to comply with adopted policy guidance on design quality and the impact of the proposals on the wider public realm. Further detail on matters of appearance is set out in Section 3 of this Statement.

1.15 In terms of *siting* the Appellant has adhered to the Pedestrian Comfort Guidance produced by TfL, to ensure that the public call box is located on the footway in a manner that will not adversely affect the free flow of pedestrians, unacceptably reduce pavement width or adversely impact upon the movement of cyclists or vehicles on the

carriageway. A technical assessment of the appeal site, in terms of existing pedestrian flows, pavement width and the suitability of the site for the locating of a public call box without causing unnecessary obstruction to all users of the street has been undertaken by a specialist Highways Consultant (Odyssey Consulting). The methodology of this assessment is set out in Section 3 of this Statement and the technical assessment itself, including photographs of the proposed location are included in Appendix 8.

2.0 BACKGROUND TO THE APPEAL PROPOSAL

Status of The Appellant

2.1 The Appellant is an electronic communications code systems operator which has been granted powers by the Communications Regulator *(Ofcom)* under the electronic communications code ('the Code') pursuant to section 106 of the Communications Act 2003. An extract from the Appellant's Code Powers Application and the Direction to grant (November 2016) these powers is attached at Appendix 3.

2.2 The Appellant is a privately owned telecommunications company that intends to roll out telecommunications infrastructure across the United Kingdom using the code powers it has under the Communications Act 2003.

Powers of The Appellant

2.3 The Communication Regulator, Ofcom, has granted statutory powers to the Appellant to establish a network of new public call boxes.

2.4 In terms of planning, as an electronic communications operator[7], the Appellant has already been granted permission in principle by the GPDO for the installation and maintenance of electronic communication equipment on the Highway.

2.5 The 'Code Powers' granted to the Appellant, in addition to permitting the installation of public call boxes, allow for the provision of 3G, 4G, '5G' and WiFi enabled services. Provision of a public call box is something of an oversimplification of the ambitions of Government for the next generation of communication networks and competition within the sector. The Appellant has been granted Code Powers to establish a new communications network to provide competition within the telecoms sector.

Principle of Permitted Development reflected in the NPPF

2.6 The NPPF is clear in its support for the delivery of high quality communications infrastructure identifying it as 'essential for sustainable economic growth'[8]. It goes on to state that, the development of high speed broadband technology and other communications networks also plays a vital role in enhancing the provision of local community facilities and services.

[7] As specified in Schedule 2 Part 16 of GPDO 2015
[8] National Planning Policy Framework para 112

2.7 Para 112 of the NPPF states that in preparing Local Plans, Local Planning Authorities should support the expansion of electronic communications networks, including telecommunications and high speed broadband.

2.8 To allow the establishment of a high quality nationwide telecommunications network, the NPPF[9] encourages competition and explicitly states that Local Planning Authorities should not apply a blanket approach to dealing with applications for the installation of new equipment. It is manifest from the decisions taken by Local Planning Authority that this is exactly what they have done. Blanket refusals on near identical grounds indicate an objection to the principle of development on the grounds of 'need'. The NPPF places great emphasis on the consideration of each proposal on its merits. The promotion of competition in this sector is encouraged, and is to be implemented through the provisions of the GPDO. The issue of need for an individual public call box in a specific location is not material to the decision making process.

2.9 This NPPF guidance could not be clearer. It is not for Local Planning Authorities to consider 'need' or to inhibit competition. The planning system should not be used as a barrier to entry for new telecommunications networks providers and should not inhibit the delivery of new networks. Paragraph 116 of the NPPF serves as a reminder that it is not for Local Planning Authorities to determine that the UKs telecommunications Network is already fit for purpose, when it is evident from the work of the National Infrastructure Committee that this is not the case.[10]

2.10 Para 116 confirms the above by stating that Local Planning Authorities must determine applications on planning grounds, as prescribed by the GPDO. They (LPAs) should not seek to prevent competition between different operators or question the need for the telecommunications system.

2.11 The need for competition in this sector has been identified as a priority of Government. This is reflected in the explicit wording of the NPPF. It is further recognised in the provision of Permitted Development Rights, which grant permission in principle, within defined guidelines in terms of dimensions, for the development of public call box of this nature. The benefits of an improved small cell network of 3G, 4G, 5G and WiFi enabled

[9] NPPF Para 114
[10] National Infrastructure Committee report of 2016, by Lord Adonis concluded that the UKs 4G Network as 54th in the World, worse than those of Romania, Albania, Peru and Panama in terms of connectivity and coverage

public call boxes are a clear objective of Government, reflected in the granting of the Code Powers, the provisions of the NPPF and the Prior Approval Provisions in the GPDO. This suite of documents give a clear indication of the technology driven ambition at the highest levels of Government and it is incumbent upon Local Planning Authorities to facilitate the delivery of these improvements for the public good.

2.12 The guidance contained in Para 115 of the NPPF states that applications for Prior Approval should be accompanied by evidence to justify the development. In this instance, this justification relates solely to matters of *siting* and *appearance* as per the requirements of the GPDO. Further justification is set out in Section 3 of this Statement. Further guidance set out in para 115, in so much as it pertains to consultations for the development of masts and antennae is not considered applicable to the appeal proposal for a public call box.

The Appellant's Telecoms Network

2.13 It is the intention that the Appellant's new network will be rolled out in London initially, to be followed immediately by other cities across the UK.

2.14 The Appellant's Code Powers allow for the inclusion of 3G, 4G, 5G small cells and WiFi capabilities, with the intention being, in addition to providing public call box functions for the benefit of the whole community, to provide a truly beneficial level of coverage and fill in gaps in the existing mobile network. It is well known, and a matter of much debate at the present time, that the UK's telecommunications infrastructure is falling way behind many other developed nations. The various functions of the public call box will address this lack of network coverage. The public call box proposals are all therefore aggregated in areas where usage will be highest in locations such as key thoroughfares and public transport nodes.

2.15 In order to provide competition as intended by Licence and Code Powers, it is, of necessity, a requirement that a large number of sites are brought forward contemporaneously to ensure that the roll-out of the network is commenced in the most viable and needed areas in the first instance. To that end, applications for Prior Approval have been submitted in each of the Central London Boroughs, and has been followed by application submissions in principal provincial Cities, to be followed by more suburban and rural locations as the company expands.

2.16 The approach adopted by the Local Planning Authority is regrettable given the guidance set out in Para 116 of the NPPF, and the Appellant would contend that the Prior Approval process has been applied in a manner which directly contradicts the stated ambition of Government to actively encourage competition in the telecoms sector.

Role of Permitted Development for the Appellant

2.17 To realise the ambition of Government in respect of the Telecoms sector, the GPDO Prior Approval process is solely to determine the acceptability of the appearance of the public call box and its siting on the street, not whether the development is acceptable in principle, as this is already confirmed.

3.0 AMBIT OF THE APPEAL

3.1 The Appellants recognise that each appeal for Prior Approval is to be determined on its planning merits and the Inspector may consider issues pertaining to the merits of the appearance and siting of the public call box. This section sets out the legal and policy scope of the appeal. There have been numerous decisions by the Courts and the Inspectorate which establish the context for the decision as to whether Prior Approval should be allowed and the scope of matters that it is appropriate for the Local Planning Authority to consider when doing so.

3.2 As established, the Appellant is a licensed electronic communications code operator.

3.3 The relevant extract from Schedule 2 of the GPDO sets the following parameters for development under *PART 16 Communications Class A – electronic communications code operators:*

- The development must be undertaken by an electronic communications code operator – which has been established in Section 2.

- The GPDO allows for the installation, alteration or replacement of any electronic communications apparatus – in this case a public call box.

- In the case of a public call box, the ground or base area of the structure must not exceed 1.5 square metres – this requirement has been complied with in the design of the public call box.

3.4 There is no dispute about compliance with the relevant conditions of the GPDO in this regard.

3.5 On the basis that the above requirements are met, the GPDO is unequivocal in referring to the issues that are for consideration as part of the Prior Approval process:

> A(3) Before beginning the development, the developer must apply to the local planning authority for a determination as to whether the Prior Approval of the authority will be required as to the siting and appearance of the development.

Matters that are not considered to be within the Ambit of the Appeal

Advertisement Control

3.6 The High Court has considered the issue of the inclusion of advertising on public call boxes and held that this is not material to the consideration of Prior Approval applications. *Infocus Public Networks Limited v Secretary of State for Communities and Local Government & the Mayor and Commonality of the Citizens of London* [2010] EWHC 3309 (*'The Infocus Case'*)[11]. Foskett J. concluded that the Outdoor Advertisement Regulations are a complete set of guidance in respect of matters pertaining to advertising on public call boxes[12], and this separate statutory scheme should not therefore be considered 'a predominant determinant' in matters relating to Prior Approval.

3.7 For the avoidance of doubt, the factual position which was the basis for the High Court's finding in *Westminster City Council v Secretary of State for Housing, Communities and Local Government and New World Payphones Limited*[13] [2019] EWHC 176 (Admin) that a kiosk proposed by New World Payphones was for the dual purpose of advertisement display and telecommunications use (and contained features which were for advertising and "not at all there for the telecommunications function") does not arise in relation to the Appeal proposals, for the reasons set out in the Counsel's Opinion appended[14] to this statement.

Matters of Antisocial Behaviour

3.8 Consistent with the view provided by *Murrell*[15], Inspectors have previously considered *'that the potential to encourage anti-social behaviour …is not relevant to this appeal'*[16]

Matters of Maintenance and Repair

3.9 Again, the Court of Appeal held[17] that the grant of permission in principle by the GPDO means that Parliament has approved the principle of the proposed development and the LPA's consideration is limited to the few matters in relation to which the prior approval process pertains, which are examined in detail in the following sections.

[11] Attached at Appendix 5
[12] In this case Schedule 2 Part 16 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
[13] Attached at Appendix 5
[14] Attached at Appendix 4
[15] Attached at Appendix 5
[16] Appeal Ref: APP/X5990/A/12/2187244 para 8 Appendix 5
[17] Attached at Appendix 5

3.10 In addition, the Electronic Communications Code (Conditions and Restrictions) Regulations 2003: S.I.2003/2553 provide controls and obligations on Code Operators pertaining to maintenance and repair.

Matters for Consideration

3.11 Prior to setting out the specific grounds of appeal, the following section sets out the approach that the Appellant has adopted in both the appearance of the public call box and its siting within the highway and townscape.

3.12 The site specific highways analysis[18] includes photographs of the site and its context including location on the footway, proximity to the carriageway and existing elements of street furniture in the vicinity of the appeal site. This visual context will be immediately evident upon visiting the site and is not described further in this Statement, beyond the photographs appended to Appendix 8.

3.13 The Appellant has considered the relevant planning policy context guidance that has been provided by previous decisions of the Courts and the Planning Inspectorate, and, in the case of the specific location of each public call box, the technical guidance provided by the Highways Authority in relation to the appropriate siting of elements of street furniture to ensure pedestrian comfort.

3.14 A summary of the principles that have been adopted by the Appellant in assessing the suitability of the development proposed are set out at the end of the 'appearance' and 'siting' sections.

3.15 The '*Infocus'* case provides some guidance to the consideration of this issue, but there is no specific definition of the matters that 'appearance' would reasonably cover. This follows from the judgment where Foskett J. considered that '*appearance (though apt to include anything attached to the surface of the public call box) would ordinarily be thought to be the intrinsic appearance of the* public call box *itself'*[19]*.*

3.16 The Appellant agrees with this opinion that the appearance could reasonably be assessed as the design of the public call box itself, but there may also be some overlap

[18] Attached at Appendix 8
[19] Appendix 5

with its impact within the townscape and the relationship to other items of street furniture and the street scene in general.

3.17 The Appellant therefore proposes to address matters of 'appearance' as the subjective aesthetic matters, and siting, to be a technical assessment of the location and orientation of the specific public call box in the specific context in terms of pedestrian movement and highway safety. In the following sections, these issues are considered in this order – commencing with subjective matters, and followed by a technical assessment of the siting issues as they relate to the movement of pedestrians and other traffic in the vicinity of the public call box.

Appearance

3.18 Running through all levels of planning policy guidance is the requirement to ensure the highest quality of design.

Tests Applied By Policy

3.19 Section 12 of the NPPF enshrines the principles of this requirement. Para 127 has provided the following guidance which has been carried through in the development of the design of the public call box.

- Innovative design will carry great weight in the determination of applications.
- Take the opportunities available for improving the character and quality of an area and the way it functions.
- Good design, which promotes sustainability, can mitigate incompatibility with existing townscape.
- The proposal's economic, social and environmental benefits will be mitigating factors where there is less than substantial harm resulting to a heritage asset.

3.20 Chapter 7 of The London Plan also sets a context for the encouragement of high quality design. London's public spaces should be secure, accessible, inclusive, connected,

easy to understand and maintain, relate to local context, and incorporate the highest quality design, landscaping, planting, street furniture and surfaces.[20]

- Street furniture and infrastructure should be of the highest quality, have a clear purpose, maintain uncluttered spaces and should contribute to the easy movement of people through the space.[21]

- Structures should be of the highest architectural quality and of a proportion, composition, scale and orientation that enhances, activates and appropriately defines the public realm.[22]

- Comprise details and materials that complement, not necessarily replicate, the local architectural character.

- Meet the principles of inclusive design.

3.21 At Local level, Camden's Core Strategy has now been superseded by the adoption of the Local Plan. Policy references to Core Strategy polices are no longer therefore applicable.

3.22 Local Plan Policy A1 provides an overarching context for the protection of amenity in the Borough, and requires development to make a positive contribution to creating strong and successful communities. Policy D1 provides the context for securing high quality design through the use of high quality materials that are appropriate for the context.

3.23 As set out in the Local Plan[23], the Council will require development to incorporate appropriate design, layout and access measures to help reduce opportunities for crime. The design of streets, public areas and the spaces between buildings needs to be accessible, safe and uncluttered. Careful consideration needs to be given to the design and location of any street furniture or equipment in order to ensure that they do not obscure public views or create spaces that would encourage antisocial behaviour

[20] London Plan 2016 Policy 7.5
[21] London Plan 2016 Policy 7.5
[22] London Plan 2016 Policy 7.6
[23] Local Plan Policy C5

and the design of the call box, as set out in subsequent sections, has directly addressed this requirement.

3.24 Camden's Local Plan contains no specific policies relating to the promotion of modern telecommunications networks in accordance with the NPPF.

Interpretation provided by Appeal Inspectors

3.25 Further guidance on interpretation of 'appearance' is found in Appeal Ref: APP/X5210/A/12/2178982[24] for a public call box proposal adjacent to 105 Tottenham Court Road, where to assist in the assessment of visual impact:

- a sound functional design which would be readily assimilated into the street setting as one of a number of items of street furniture.

3.26 In Appeal ref: APP/X5210/A/12/2178982 for a public call box proposal adjacent to 105 Tottenham Court Road, The Inspector concluded, in allowing the appeal, that adding to the existing street furniture could be considered appropriate where:

- the impact of the payphone either alone or in combination with existing structures should not be visually dominant or disruptive

3.27 In Appeal ref 348 Harrow Road ref: APP/X5990/A/12/2187244[25] the inspector concluded that

- *simple and functional design to allow the* public call box *to be visually read together with the variety of street furniture to blend in with the mixed commercial, retail and residential character of the local area.*

3.28 To meet the policy tests set out above, the following guiding principles have been applied to the design of the public call box:

1. **Sound functional design**
2. **Using high quality materials**
3. **Not visually intrusive or dominant, to the point where it could be considered 'clutter'**

[24] Appendix 5
[25] Appendix 5

4. Consistent with the general design of other street furniture

3.29 As a single licensed provider under the Code, the Appellant will be delivering a network of public call boxes. Since the design of the ubiquitous K6 phone box for the GPO in 1924, there has been an acceptance of uniformity of design to signify the network provider.

3.30 There must therefore be an acceptance that the design of the proposed public call box will be consistent across the network.

3.31 There are parameters set by the GPDO in terms of size, which have been closely adhered to and the Ofcom requirements of accessibility, openness and simplicity of use and maintenance, which have led to the simple form of public call box now proposed.

3.32 There are numerous examples of new public call boxes developed by new licensed operators. In developing the design, the Appellant made a conscious decision to avoid the pastiche approach that has been adopted by some other code operators and no attempt has been made to mimic the design cues of the classic K6 Phone Public call box or deploy unnecessary embellishment or frills. The guiding principle in terms of the Appellants Design has been that form must follow function as elegantly as possible.

3.33 This is the latest version of the Maximus public call box (referred to as Max 2). The design has been developed over the course of the last two years, in part, as a response to comments on previous designs and also as a reflection of Maximus' commitment to the highest standards of design.

3.34 In a fast moving sector of the economy, this latest design incorporates the free-to-use, inclusive and accessible ‘pay’ phone, supplemented, in accordance with the operator’s Code Powers, by 4G/5G, WiFi and small cell technology to improve broadband, mobile phone and data connectivity to facilitate calls made by the public.

3.35 This public call box is an updated version of previous products with a simple design approach, sympathetic in scale and form to existing street furniture. The updated style reduces the structures profile within the street scene so that the public call box will only be readily visible in direct views along the pavement, where it will form part of the recognisable street furniture in terms of design and scale.

3.36 The footprint of this public call box has been substantially reduced when compared to more traditional designs, to minimise the impact on useable pavement area and to be discrete when viewed in profile or oblique views, as a response to perceived concern over appearance within the streetscape. The height and width is a specific response to the space and function requirements of the extensive telecommunications equipment housed within. The height of the structure has been determined to optimise the functioning and efficiency of the 4G/5G, small cell and WiFi technology within.

3.37 The canopy serves a shelter, and is made of solar glass panels that will power the unit. In addition, the widest faces of the call box incorporate photovoltaic glass to maximise the energy generating potential. The phone is easily accessible by wheelchair users, and the width provides an element of 'defensible space' in the absence of a more 'traditional' cabin. LED lighting strips on the outside edges of the call box are included for safety purposes, solely to identify the edge of the structure on the pavement during hours of darkness and will be in a customisable contrasting colour. Similarly, the overall colour of the call box is customisable, but would typically be 'gun metal' grey or black, and will have a 'sheen' through the integral use of toughened glass and photovoltaic glass in the structure. A central panel on the opposite face of the call box from the phone will allow access to equipment inside for maintenance purposes and the replacement and updating of hardware within the call box as required.

3.38 Every element of this design has been carefully considered to ensure that ‘form follows function’. The proposal submitted is an enhancement of the traditional public call box design in every regard, and will make a positive contribution to the townscape in terms of operation, function and design.

3.39 The orientation of the public call box is designed to optimise customer comfort, convenience and accessibility and at the same time to maintain satisfactory safe and unimpeded pedestrian flows on the adjacent footway. The shallow profile of the Appellant’s public call box will improve visibility and discourage any anti-social behaviour or criminal activity.

3.40 The public call box will be sited a minimum of 450mm from the pavement edge. The ground or base area of the structure does not exceed 1.5 metres square in accordance with the requirements of the GPDO. The design is purely and primarily to facilitate the public call box functions within the legal parameters set out in the GPDO.

3.41 Solar panels on each public call box will power the unit. The payphone will connect to the network via mobile telephone technology. As a result, the public call box does not require support from any utility services and is completely independent - This provides flexibility in terms of siting. The selection of sites has therefore been determined partly by the requirements of network coverage and also by the site specific selection criteria outlined in the following section.

Appearance within the Townscape

3.42 For the purposes of this appeal, and after securing Leading Counsel's advice, the Appellant have assessed matters of 'siting' as a technical exercise and have employed a methodology derived from published guidance by TfL to ensure pedestrian comfort and highway safety. It is therefore appropriate at this point to comment on the overlap between appearance and townscape. For the reasons set out above, the design of the Appellant's public call box is simple and functional and has been developed to be consistent with other items of street furniture so as to avoid being intrusive or dominant.

3.43 If applying any methodology to the assessment of townscape impact, it is important to establish the base position from which the analysis is being undertaken. This is a consistent approach adopted in *Guidance for Landscape and Visual Assessment from the Landscape Institute* and was followed through in other policy publications that have focused on a qualitative assessment of townscape including *'Seeing History in the View' 2011* (English Heritage) and the *London View Management Framework 2010 (GLA).* While not wholly relevant in the assessment of the townscape impact of siting of a public call box, the approach to assessment would remain valid.

3.44 With every principal street there is an obvious hierarchy in terms of its appearance.

- Starting with the faces of buildings that constrain and contain the view, and their scale, materials and in some instances historic significance. Added to this initial construct are the various elements of signage, both fascia and projecting and their various levels of illumination.

- In some instances there may be shelving (grocers) or chairs and tables associated with the active uses at ground floor level, or ATMs, which again, have an influence on the visual character of the street, by virtue of their appearance and the nature of their use.

- Below fascia level in the view, are typically streets lighting, numerous traffic signs and signals, and street trees, all with varying levels of permeability depending on the location of the viewer and their movement through the space.

- The next tier would include larger items of common street furniture, notably bus shelters, public call boxes, TfL way finding signage and occasional free standing advertisement hoardings.

- At the lowest level, smaller street furniture including litter bins, benches and cycle stands and all common place within any particular view of a street.

- From the curb edge, then, the presence of parked vehicles or bus stops can have a significant bearing on the character of the street in visual terms. The presence of vehicles, particularly large vehicles like buses or goods vehicles can have a substantial impact on the visual experience at any moment in time.

- Similarly the number of pedestrians at any point will have a significant effect on the experience of the townscape.

3.45 Where the eye is drawn can depend on a wide range of factors, in terms of destination, intent or proliferation of colour or signage. The common factor is the experience of the whole, no particular item or element is viewed in isolation. Familiarity and comfort tend to come from the consistency of the hierarchy described above and a public call box which is designed not to draw the eye, and to be consistent with other items of street furniture that appear in this element of the streetscape hierarchy, will ensure that it is neither dominant nor intrusive in any townscape view.

3.46 The Local Planning Authority have a stated policy ambition to reduce ‘clutter’ in the public realm. The reasons for refusal indicate that the public call box proposal is considered to ‘introduce’ clutter. The aspiration would seem to be to secure a ‘minimalist’ public realm, bereft of any items of street furniture and a blank canvas that can be enjoyed by those passing through or experiencing it. While this aspiration may be laudable it is both unrealistic and unnecessary and based on a rose-tinted vision of

what the streets of a major city may be, even if the fact is that this has never been the case. The streets of all major cities have a vibrancy, a level of activity, multiple uses and activities occurring all at the same time, and the thoroughfare is where this activity is at its greatest. Street signs, bus shelters, traffic lights, rubbish bins, cycle racks, benches – all have their place within the public realm and the street-scene. There is a part of the pavement where these items are common place, and familiar. All of these elements are the necessary accoutrements of the modern street, there is a reason and a requirement to support their location within the public realm. To remove street signs or traffic lights on the basis that they represent 'clutter' would seem counter intuitive. To remove rubbish bins, cycle racks or benches would not serve the public good. To imply that the appeal proposals would introduce 'clutter' would suggest that the public call box proposal is not needed. The NPPF is very clear that Local Planning Authorities should not assess proposals based on need. The need has been established, and the siting of the proposal should be considered on that basis.

3.47 For this reason, it would follow, that where the location of the public call box is proposed on the Highway where there is already an element of 'street furniture' it could be considered to be appropriately sited in terms of its appearance.

Siting

3.48 London Plan Policies 6.9(B) and 6.10(B) confirms that development proposals should ensure high quality pedestrian environments and emphasises that the quality of the pedestrian and street space can be achieved by referring to The TFL Pedestrian Design Guidance.

3.49 In identifying sites for each proposed public call box, the Appellant has employed experts in the field. In terms of the general location of the public call boxes within the footway, the following general tests have been applied in the site selection process:

- **Aligned with other items of street furniture and so well assimilated into the existing street scene.**

- **In an area that is not unusually or excessively cluttered with street furniture.**

- **Not in an area where there is or would be visual congestion.**

- **On a section of footway that is sufficiently wide to enable a reasonable application of the recommendations set out within TfL's Pedestrian Comfort Guidance for London and in any event to allow a minimum of 2m of unhindered pedestrian footway width, to accord with standard footway design principles.**

- **Not within pedestrian desire lines such that it will not unduly interfere with pedestrian flows.**

- **In an area where it will not result in any adverse impact on pedestrian or vehicular safety.**

- **A minimum of 450mm from the edge of the footway to allow for the free passing of traffic, which can be secured by street works permit following approval.**

3.50 With regard to the methodology used in this case, it is considered appropriate that design and assessment guidance set out within ***TfL's Streetscape Guidance – 3rd Edition 2017 Revision 1***, and ***TfL's Pedestrian Comfort Guidance for London – 2015***, is used. Within these documents it is evident that the right place to site new public call box is within the existing footway.

3.51 Chapter 11 of the Streetscape Guidance deals with footway amenities. Section 11.1 of the Guidance sets out the vision and general principles relating to the provision of street furniture. Section 11.2 refers to footway zones. These are generally divided into the frontage zone, the footway clear zone, the furniture zone and the kerb zone. As set out in Figure 202 of Section 11.2, the general aim is to maintain a footway clear zone with a preferred minimum of 2m. This can be reduced to an absolute minimum of 1m where there is an obstacle along a length of not more than 6m.

3.52 The footway clear zone should be in the centre of the footway and street furniture should typically be on either side of the footway clear zone, but predominately in the furniture zone adjacent to the kerb zone. The location of street furniture within the

frontage zone is not prohibited provided it does not unduly compromise access to buildings, retail shop frontages or residential amenities.

3.53 Pages 205 – 207 of the Streetscape Guidance describe the types of street furniture that can be accommodated in the furniture zone, noting that public call boxes and other large items are included within the permitted list. There are evidently numerous exceptions to this rule and in certain circumstances street furniture will be permitted in the frontage zone as an alternative to the traditional furniture zone.

3.54 Chapter 11.11 of the Streetscape Guidance refers specifically to public call boxes. It advises that public call boxes should not be installed where the footway clear zone is less than 2m wide (except in "pinch point" situations described above, where an absolute minimum of 1m is considered acceptable). Also, the public call box should be located no less than 450mm from the kerb face and should generally be fitted so that the advertisement faces the flow of traffic.

3.55 In producing evidence to demonstrate the acceptability of the proposed public call box, the Pedestrian Comfort Guidance for London has been used in the first instance. In this regard Appendix B of the Guidance sets out recommended footway widths for different levels of pedestrian flow based on research carried out for TfL for that specific project. The research was based upon data collected at 75 pedestrian sites across the Transport for London Road Network. It is stated within the Guidance (at Appendix A) that although the research was focused on the TLRN roads, the results and methods are transferrable across other parts of London as the Guidance is organised and applied on an area type basis.

3.56 At Appendix B of the Comfort Guidance, three categories of pedestrian flow are defined, namely, Low Flow, Active Flow and High Flow. Recommendations are then made, based upon each of these three flow categories, on the minimum footway width which would accommodate this level of flow together with a large piece of street furniture. In the case of Low Flow (less than 600 pedestrians per hour) a recommended minimum footway width (total width) of 2.9m is put forward as being enough for comfortable movement plus a large piece of street furniture. In the case of Active Flow (between 600 and 1200 pedestrians per hour) the recommended minimum footway width (total width) for comfortable movement and a large piece of street furniture is 4.2m. For High Flow (above 1200 pedestrians per hour) the recommended

minimum footway width (total width) is 5.3m for comfortable movement for up to 2000 pedestrians per hour and a large piece of street furniture.

3.57 As a primary test of acceptability the above recommendations have been used (based on pedestrian flows and footway widths) to determine whether the proposed public call box is appropriately sited. As a secondary test, the achievement of a minimum footway clear zone width of 2m (absolute minimum of 1m) in accordance with TfL's Streetscape Guidance 2017 is assessed with the proposed public call box in place.

3.58 As a tertiary test, where the pedestrian comfort recommendations are not met, it is considered reasonable to look at each public call box in the context of its proposed environment and to assess whether its siting would reduce the effective or clear footway width below that which already exists by virtue of other pieces of street furniture in the vicinity. If there is no material worsening of the effective or clear footway width then in these circumstances the proposed public call box is deemed to be acceptable.

3.59 In each case reference is made to the reasons for refusal on highways grounds whether they be generic reasons such as pedestrian sight lines or street clutter, or whether they be site specific reasons.

3.60 A dashboard has been produced for each proposed public call box (see Appendix 8 of this Appeal Statement) which provides a suitably dimensioned ordnance survey plan of each site, a relevant site location plan, a site photograph, pedestrian flow details (or an assessment of such based upon the area type referred to at pages 37 to 41 of TfL's Pedestrian Comfort Guidance) and a summary of any highways reasons for refusal. A spreadsheet is included which shows how the public call box in question performs against the three tests set out above. A response or responses to the reasons for refusal are also summarized from a highways perspective. Specific evidence is given to assist the Inspector on the dashboard to enable him or her to make a reasonable judgement as to the acceptability of the siting of the proposed public call box.

4.0 REASONS WHY PRIOR APPROVAL SHOULD BE ALLOWED

4.1 In view of the parameters established by the GPDO, the Grounds of Appeal address those issues that fall within the scope of the Prior Approval Process, the following reasons are provided why this Appeal should be allowed.

4.2 The application for prior approval was refused for the following reasons:

1 The proposed telephone kiosk, by reason of its location, size and detailed design, would add to visual clutter and detract from the character and appearance of the street scene, contrary to policy D1 (Design) of the London Borough of Camden Local Plan 2017.

2 The proposed telephone kiosk, by virtue of its location, size and detailed design, and adding unnecessary street clutter, would reduce the amount of useable, unobstructed footway, which would be detrimental to the quality of the public realm, cause harm to highway safety and hinder pedestrian movement and have a detrimental impact on the promotion of walking as an alternative to motorised transport, contrary to policies G1 (Delivery and location of growth), A1 (Managing the impact of development), C6 (Access for all) and T1 (Prioritising walking, cycling and public transport) of the London Borough of Camden Local Plan 2017.

3 The proposed telephone kiosk, by virtue of its inappropriate siting, size and design, would fail to reduce opportunities for crime and antisocial behaviour to the detriment of community safety and security, and compromise the safety of those using and servicing the telephone kiosk contrary to policy C5 (Safety and Security) of the London Borough of Camden Local Plan 2017.

4 The proposed telephone kiosk, by reason of its design, would not be accessible to wheelchair users, failing to promote fair access or meet sufficient standard of design contrary to policy C6 (Access for all) of the London Borough of Camden Local Plan 2017.

4.3 When considering the reasons to allow this appeal, the Appellant considers that the proposal complies with adopted policy and guidance for the following reasons:

1. The public call box is of high quality design, in terms of elegant simplicity, with its form following function. For the reasons set out in section 3 of this statement the Appellants are of the view that the public call box proposed would by virtue of its high quality design comply with the objectives of policy.

2. The public call box would not be visually intrusive or dominant in the streetscape by virtue of its simple form, which is consistent with the design of other street furniture, and neutral appearance and the palette of materials used would be appropriate to the context.

3. The public call box is in a location defined in the TfL's Comfort for Pedestrians Guidance as being suitable for the location of street furniture.

4. There would be no significant decrease in the amount of usable and unobstructed footway. The installation of the payphones would not be detrimental to the quality of the public realm, nor the amenity or the safety of pedestrians. There will continue to be ample room for pedestrians to walk in comfort and freedom on this stretch of pavement, in accordance with the approach advocated by TfL's Pedestrian Comfort Guidance This analysis is set out in Appendix 8 of this statement. For this reason, the Appellant believes that the proposal complies with the objectives of adopted policies[26] in this regard.

5. The Council has provided no evidence to support the contention that a public call box in this specific location will result in an increase in anti-social behaviour.

6. As set out in previous sections of this statement, the call box has been specifically designed to meet the requirements of disabled users.

[26] Camden Local Plan Policy A1, C6 and T1, *6.9(8) and 6.10(B) of the London Plan (MALP 2016), and TfL's adopted Streetscape Guidance (2016).*

4.4 For all of the reasons set out in this statement, the Appellant believes that the appeal should be allowed as the appearance and siting of the public call box meet all of the applicable policy tests.

5.0 SUMMARY

5.1 It is submitted in summary that the reasons put forward by the LPA do not justify its decision to refuse Prior Approval for the installation of this particular public call box.

5.2 The refusal of the application for Prior Approval has the effect of preventing competition in the provision of electronic communications services contrary to Part 10 of the NPPF and to EU Legislation on competition in the provision of electronic communications services. The need for a network of new public call boxes is not in dispute, or material in the consideration of this appeal. Planning Permission has effectively been granted for the development proposed in principle, subject to the Prior Approval of matters of appearance and siting.

5.3 For the reasons set out above, the Inspector is respectfully requested to allow the appeal and to confirm permitted development status, thus enabling the installation of this public call box to proceed.