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## Appeal Decision

Site visit made on 22 July 2019

by **S Poole BA(Hons) DipArch MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29<sup>th</sup> July 2019

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### **Appeal A, Ref: APP/X5210/W/18/3211166**

#### **Pavement outside 101 Euston Road, London NW1 2RA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
  - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
  - The application 2018/0314/P, dated 21 January 2018, was refused by notice dated 14 March 2018.
  - The development proposed is described on the application form as a call box.
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### **Appeal B, Ref: APP/X5210/W/18/3211483**

#### **Pavement outside 100-110 Euston Road, London NW1 2AJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
  - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
  - The application 2018/0326/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
  - The development proposed is described on the application form as a call box.
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### **Appeal C, Ref: APP/X5210/W/18/3211491**

#### **Land adjacent to 137-139 Euston Road, London NW1 2AA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
  - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
  - The application 2018/0330/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
  - The development proposed is described on the application form as a call box.
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### **Appeal D, Ref: APP/X5210/W/18/3211532**

#### **Land adjacent to Unison Centre, 130 Euston Road, London NW1 2AY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
  - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
  - The application 2018/0313/P, dated 21 January 2018, was refused by notice dated 16 March 2018.
  - The development proposed is described on the application form as a call box.
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## **Decision**

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

## **Procedural Matters**

2. The appeal sites are located in close proximity to one another and the proposals are for the same form of development. In addition, most of the Council's reasons for refusal are the same in each case. Consequently, whilst I have considered each proposal on its individual merits, I consider it appropriate to issue a single decision covering the 4 appeals.
3. Differing versions of the site addresses have been given on the application and appeal forms and on the decision notices. In the interests of clarity I have used the descriptions that best describe the locations of the proposed call boxes in the banner headings above.
4. The application drawings do not explicitly indicate how the proposals before me would be orientated, namely whether the solid walls would be parallel or at right angles to the pavement edge. In the absence of this information I have deemed it necessary to take into account all scenarios in my assessment of the proposals.
5. As an electronic communications code operator, the appellant benefits from deemed planning permission for call boxes that fall within the permitted development rights of Schedule 2, Part 16, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO), subject to the prior approval requirements under paragraph A.3. The appellant applied to the Council on that basis. The Council determined that prior approval was required and it was refused.
6. The Council's decisions refer to various development plan policies. However, the principle of development is established by the GPDO and prior approval relating to paragraph A.3 of Schedule 2, Part 16, Class A of the GPDO does not require regard be had to the development plan. The provisions of the GPDO require a proposal of this type to be assessed solely on the basis of its siting and appearance, taking into account any representations received. Nonetheless, I take account of the policies and guidance cited by both parties in so far as they are relevant to matters of siting and appearance.
7. A revised National Planning Policy Framework was published in February 2019. I am satisfied that the revised Framework does not differ from previous versions in respect of the substance of the matters before me and have not therefore deemed it necessary to seek comments on the revised Framework. Like earlier versions of the Framework, the revised version supports high quality communications infrastructure, including applications for prior approval, and requires local planning authorities determine applications on planning grounds. As the principle of development is established by the GPDO, considerations such as the need for the call boxes are not relevant matters.
8. Some of the appeal sites are located close to listed buildings. The Framework states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation. Significance can be harmed through alteration of the heritage asset or by development within its setting.

9. The determination of these appeals was delayed due to a High Court judgement<sup>1</sup>. The judgement concluded that the telephone kiosk in question was for the dual purpose of advertisement display and telecommunications use and therefore outside the scope of Schedule 2, Part 16, Class A of the GPDO. The information before me in these cases does not clearly show that the proposed call boxes would serve a dual purpose. I am therefore satisfied that the proposals fall within the scope of Schedule 2, Part 16, Class A of the GPDO.

### **Main Issue**

10. The main issue is whether or not approval should be given in respect of the siting and appearance of the proposed call boxes, with particular regard to the effects on the character and appearance of the area and on highway and pedestrian safety. In respect of appeal D, regard also needs to be had to the effect of that proposal on the setting of a listed building.

### **Reasons**

11. The four appeal sites are located within a short portion of Euston Road between the British Library and the junction with Churchway and are close to mainline railway and underground stations. Appeals A and C relate to proposals for call boxes within the pavement on the southern side of the road in front of 101 and 137-139 Euston Road respectively. Appeal appeals B and D relate to proposals for call boxes within parts of the pavement in front of 100-110 and 130 Euston Road on the northern side. Euston Road is a heavily trafficked main 4-lane road with a bus lane on one side. It is lined by substantial buildings on both sides including offices and hotels.
12. On the northern side of this portion of Euston Road there are 2 grade II listed buildings. Next to the junction with Churchway there is the Elizabeth Garrett Anderson Hospital, an imposing late-Victorian red-brick Queen Anne style building. At 120 Euston Road there is the Rocket Public House, a late-Victorian public house. Whilst I note that the appeal sites are close to the Bloomsbury Conservation Area, there is little or no visual relationship between the sites and the Conservation Area and therefore I am satisfied that the proposals would not affect the setting of the Conservation Area.
13. The proposed call boxes would have canopies measuring approximately 1.325m by 1.125m that would be supported by a full-width solid wall, that would house the telephone, and two 0.55m largely glazed side elements, resulting in a largely open structure with an overall height of about 2.6m. The call boxes would be constructed of powder coated steel, polycarbonate and toughened glass and would include a solar panel on the roof.
14. I note that the call boxes would be significantly wider than the enclosed kiosk-type call boxes that are prevalent in the area, would include solid walls similar in size to those seen at the ends of bus shelters in the area and would have particularly prominent and boxy canopies. In my judgement, due to their size and design, these structures would not represent a discrete or high-quality form of street furniture.

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<sup>1</sup> Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)

### *Appeals A and C*

15. The sections of pavement on the southern side of Euston Road in front of Nos. 101 and 135-137 are of similar width and include a strip next to the road where lampposts, traffic lights, signage and other relatively unobtrusive items of street furniture are accommodated. The only substantial element of street furniture in this area is a bus shelter. The proposed call boxes would introduce 1.325m wide by 2.6m tall solid "walls" to portions of pavement that are otherwise relatively unobstructed and uncluttered. Due to their size, appearance and sitting the call boxes would be highly obtrusive and incongruous elements that would detract from the character and appearance of the street scene.
16. The call boxes would be sited in a well-used section of pavement, close to the pavement edge and therefore close to a busy bus lane, that is also used by cyclists. Due to their substantial width, the solid walls of the call boxes would limit visibility causing potential for conflict between road and pavement users at times when the pavement is heavily used or if obstructed for some reason.

### *Appeal B*

17. The portion of pavement in front of 100-110 Euston Road is relatively wide and includes a number of mature trees and 3 fully enclosed telephone kiosks, of which 2 are a matching pair located next to each other. The third kiosk is positioned in the same alignment and all 3 are broadly in line with the nearby trees. The existing kiosks are poorly maintained and, at the time of my visit, one appeared to have been vandalised. Although these kiosks detract from the appearance of the street scene they are reasonably compact. By contrast the main wall of the proposed call box would be significantly wider than the existing call boxes and the canopy would cover a more extensive area. In this location, due to its size and appearance, the proposed call box would be an incongruous and visually intrusive addition to the street scene that would harm the appearance of this section of Euston Road.
18. The proposed call box would broadly align with the existing call boxes leaving a reasonable width of unimpeded pavement. For this reason, I am satisfied that the siting of the proposal subject to appeal B would not create obstructions that would give rise to unacceptable harm to pedestrian safety, including people with visual impairment.

### *Appeal D*

19. The section of pavement in front of the Unison Centre and the Elizabeth Garrett Anderson Hospital is wide and is notable for the mature trees within it and, with the exception of some cycle stands and lampposts, the absence of street furniture, which contributes to the quality of the settings of the 2 buildings. The proposed call box subject to appeal D would be located close to one end of the cycle stands and therefore also close to the Elizabeth Garrett Anderson Hospital. Not only would the proposal harm the appearance of this portion of the street scene, due to its siting it would also be detrimental to the setting of the grade II listed building.
20. By virtue of its siting close to the cycle stands and the width of the pavement I am satisfied that the siting of the proposal subject to appeal D would not create

obstructions that would give rise to unacceptable harm to pedestrian safety, including people with visual impairment.

### **Other matters**

21. The Council's third and fourth reasons for refusal relate to crime and antisocial behaviour and wheelchair accessibility. As the GPDO requires proposals for call boxes to be assessed solely on the basis of their siting and appearance, the third and fourth reasons for refusal do not require consideration.
22. The appellant has referred to a number of appeal decisions in support of the appeals. However, as each appeal relating to prior approval of a proposed call box is necessarily assessed on its individual merits having regard to its particular siting, context and circumstances, I attach limited weight to the appeal decisions referred to.

### **Conclusion**

23. For the reasons set out above, and having regard to all other matters raised, I conclude that appeals A, B, C and D should fail.

*S Poole*

INSPECTOR