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## Appeal Decisions

Site visits made on 11 November 2019 by Thomas Courtney BA(Hons) MA

### Decisions by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 09 January 2020

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#### All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeals are made by Maximus Networks Ltd against the decisions of the Council of the London Borough of Camden.
  - The development proposed in each case is a public call box.
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#### Appeal A - Ref: APP/X5210/W/19/3231423 137 Euston Road, London NW1 2AA

- The application Ref 2018/5525/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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#### Appeal B - Ref: APP/X5210/W/19/3231436 130 Euston Road, London NW1 2AY

- The application Ref 2018/5536/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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#### Appeal C - Ref: APP/X5210/W/19/3231441 100-110 Euston Road, London NW1 2AJ

- The application Ref 2018/5557/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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#### Appeal D - Ref: APP/X5210/W/19/3231444 101 Euston Road, London NW1 2RA

- The application Ref 2018/5546/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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#### Appeal E - Ref: APP/X5210/W/19/3231469 7 High Holborn, London WC1V 6DR

- The application Ref 2018/5534/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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#### Appeal F - Ref: APP/X5210/W/19/3225167 16 Proctor Street, London WC1V 6NX

- The application Ref 2018/3831/P, dated 6 August 2018, was refused by notice dated 25 September 2018.
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#### Appeal G - Ref: APP/X5210/W/19/3231448

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**166 High Holborn, London WC1V 6TT**

- The application Ref 2018/5555/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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**Appeal H - Ref: APP/X5210/W/19/3231463****190 High Holborn, London WC1V 7BH**

- The application Ref 2018/5578/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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**Decisions**

1. All 8 appeals are dismissed.

**Appeal Procedure**

2. The site visits were undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

**Procedural Matters**

3. Whilst each appeal relates to a different site, the proposed call boxes on the sites are identical. I have considered each proposal on its individual merits, but as they raise similar issues, the cases are dealt with in a single decision letter.
4. On 25 May 2019, the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 came into force, amending the General Permitted Development Order (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, the planning permission granted by Schedule 2, Part 16, Class A continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. That is the case in respect of the eight appeals before me.
5. As such, and as the appellant is an electronic communications code operator, the appellant is able to benefit from permitted development rights for a proposed call box under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO), subject to the conditions in part A.3 which requires the prior approval of the local planning authority in respect of the siting and appearance of the development.
6. The provisions of the Order require the local planning authority to assess the proposed development solely on these matters. As such, considerations such as the necessity for a telephone kiosk and whether it may be used for advertising in the future are not relevant to this appeal. Likewise, the Council's concerns relating to the proposal's accessibility for wheelchair users goes beyond the scope of part A.3. Accordingly, the main issues are set out below.
7. The issue of the inclusion of advertising on public call boxes has been considered by the High Court. A recent judgement in the Westminster case (Westminster City Council v Secretary of State for Housing, Communities and

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Local Government & New World Payphones Ltd (2019) EWHC 176 (Admin) considered the matter of dual purpose of advertisement display and telecommunications use. This judgement confirmed 'that the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it'. The judgement went on to state that a development falls outside the scope of Part 16, Class A if it is not 'for the purpose' of the operator's network. Thus, if the development is partly for some other purpose beyond that of the operator's network, it cannot be development 'for the purpose' of the operator's network precisely because it is for something else as well. In that case the proposed call box was for a dual purpose of advertisement display and telecommunications use and therefore contained features that were for advertising and 'not at all there for the telecommunications function'.

8. In the case of the appeals before me, I have taken into account the submitted Opinion of Counsel regarding this matter and the design of the proposed public call box provided. The design of the proposed call boxes comprises a steel-framed kiosk, constructed with steel side casings, laminated and toughened glass, areas of black laminated solar panels, LED lighting strips on the outside edges, and a solar roof panel canopy. The drawings show them to be 3.119m high, with a footprint of around 0.219m by 1.325m. They would comprise a two-sided structure, with one side incorporating a non-illuminated glass display panel which provides maintenance access to the equipment and the other side incorporating a public pay phone. It is apparent that the form and design of the proposed telecommunications apparatus is driven by its proposed functionality as a public call box. I have no evidence to suggest that the proposed development includes elements that are there for the purpose of advertising. Consequently, on the basis of the evidence provided in these appeals, I consider that the proposals are for the purpose of the operator's electronic communications network, are not dual purpose, and so are able to benefit from permitted development subject to the conditions in part A.3.
9. The principle of development is established by the GPDO 2015 and the provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require the development to be judged against the policies of development plan. Nonetheless, I have had some regard to the policies of the development plan, any related guidance and the National Planning Policy Framework only in so far as they relate to matters of siting and appearance.

### **Main Issues**

10. The main issues are:

- the effect of the proposal's siting and appearance on the character and appearance of the surrounding area;
- the effect of the proposal's siting and appearance on pedestrian safety; and
- the effect of the proposal's siting and appearance on crime and anti-social behaviour in the surrounding area.

I deal with the first two main issues for each case first, and then consider the third issue collectively for all the sites.

### **Reasons for the Recommendations**

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## **Appeal A: 137 Euston Road, London NW1 2AA**

### *Character and appearance*

11. The site is located on the outer edge of a section of pavement along Euston Road, close to the entrance to No. 137. This stretch of road is within a busy commercial district characterised by tall and modern office buildings, hotels, and a few historical buildings. Directly opposite the site, on the north side of Euston Road, is the Grade II listed 'The Rocket' Public House. Views of the attractive facade of the historical building are possible from near the appeal site because this stretch of pavement is relatively devoid of street furniture, albeit there are lampposts and a road sign nearby and a bus stop approximately 10 to 15 metres to the east of the appeal site.
12. I recognise that the style of the proposal would be functional and its height would respond to the requirements of the telecommunications equipment within and the efficiency of the 4G/5G, small cell and WiFi technology. However, due to the odd appearance of the roof-mounted solar panels and its imposing height and bulk in a mostly uncluttered location, it would appear prominent and incongruous in this setting. It would be a visually intrusive addition to the streetscene when seen from various positions along the road.
13. Though the Council consider the structure would accommodate an illuminated advertising panel which, they suggest, would harm the setting of the nearby listed building, the drawings indicate the rear panel would be non-illuminated. As such I do not consider the development would affect the setting of this listed building. Nonetheless, the siting and appearance of the development would harm the character and appearance of the area.

### *Pedestrian safety*

14. At the time of my visit, the street was very busy with pedestrians travelling past the appeal site to the offices and shops in the vicinity, to the nearby bus stops, as well as to Euston, St Pancras and Kings Cross stations nearby. The primary test provided by the appellant for establishing the suitability of the appeal site, (derived from the Transport for London document Pedestrian Comfort Guidance) suggests that the footway in such areas of high pedestrian flow should be 5.3m wide. The plans show the pavement to be only 4.4m at the site. Therefore, given the busy pedestrian flows, I consider that the proposal's siting would impede pedestrian movement and adversely affect pedestrian safety.

## **Appeal B: 130 Euston Road, London NW1 2AY**

### *Character and appearance*

15. The appeal site is located on an area of pavement adjacent to Unison House, 130 Euston Road, on the north side of the road. This stretch of Euston Road is characterised by a mix of tall commercial buildings and a few more historical buildings. It is a major road with a large amount of pedestrian footfall close to Euston Station as well as Kings Cross and St Pancras Station. The site is adjacent to the Grade II listed building at 128-144 Euston Road, known as the former Elizabeth Garrett Anderson Hospital and the Grade II listed 'The Rocket' Public House (120 Euston Road) is a short distance to the east.

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16. In the vicinity of the appeal site is a row of kerbside cycle stands, a utility box and four mature trees. Although the design of the proposal would be functional and responds to the requirements of the telecommunications equipment within, its imposing height, excessive bulk and the odd appearance of the solar panel canopy would appear incongruous in the context of the shorter or thinner items of man-made street furniture. It would be a visually intrusive addition to the locality, adding clutter to the area when seen from various positions on Euston Road. Moreover, the resultant cluttered effect would detract from the setting of the adjacent Grade II listed building at 128-144 Euston Road.
  17. The siting and appearance of the development would therefore harm the character and appearance of the area including the setting of the heritage asset. The harm arising to the setting of the listed building would be localised and less than substantial. However the public benefits, including providing access to a USB charging point, free public WiFi and accessibility to a telephone kiosk for people with limited mobility including wheelchair users, do not outweigh the harm to the heritage asset identified.

*Pedestrian safety*

18. The pavement at the site is wide and straight. Despite the high flow of pedestrians, I do not consider that the proposal's siting would impede pedestrian movement or adversely affect pedestrian safety.

**Appeal C: 100-110 Euston Road, London NW1 2AJ**

*Character and appearance*

19. The appeal site is located on an area pavement in front of a large hotel building with a street level bar and restaurant. It is on the northern side of Euston Road in an area characterised by tall and modern buildings, in proximity of major railway stations, the British Library and numerous university buildings.
20. The proposed call box would be close to two kerbside cycle stands, four mature trees, three existing phone kiosks, a kerbside utility box, a street map information panel, two lampposts, and a set of traffic lights.
21. I recognise that the style of the proposal would be functional and its height would respond to the requirements of the telecommunications equipment. However, due to its imposing height and bulk, being greater than the existing phone boxes; contrasting design with these existing phone kiosks; and odd appearance of the roof-mounted solar panels, it would appear prominent and incongruous in this setting. It would be a visually intrusive addition to the locality and, with the existing items of street furniture, would lead to a cluttered streetscene. Its incongruity in its context resulting from its siting and design would harm the character and appearance of the area.

*Pedestrian safety*

22. At the time of my site visit, this part of Euston Road was busy with a significant flow of pedestrians. Given the proximity of Euston Station and Kings Cross & St Pancras Station as major transport nodes, as well as the number of offices and university buildings in the vicinity of the site, it is anticipated that those flows would increase further at peak times.

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23. The proposal would reduce the useable width of the pavement. I note the analysis of the appellant's highways consultant that the proposal would accord with the Pedestrian Comfort Guidance produced by Transport for London and would not compromise pedestrian intervisibility or safety. Nonetheless, given the busy pedestrian flow I saw at my site visit, and likely greater flow at peak commuting times, I consider that the proposal would, in combination with the other street furniture, impede pedestrian movement and adversely affect pedestrian safety.

**Appeal D: 101 Euston Road, London NW1 2RA**

*Character and appearance*

24. The proposed call box would be sited on a stretch of pavement on the southern side of Euston Road, close to the junction with Mabledon Place. This stretch of road is a busy district characterised by a mix of modern and historical buildings, many with restaurants and bars occupying the ground floors. It is a major road with a large amount of pedestrian footfall close to Euston Station as well as Kings Cross and St Pancras Station. To the north-east of the site lies the British Library.

25. The site is located on a stretch of pavement already characterised by a fair amount of street furniture. There are two kerbside utility boxes nearby as well as two lampposts, and two sets of traffic lights. The site lies outside of the entrance to an office building at No.101 and in-between two restaurants/café's. I recognise that the style of the proposal would be functional and its height would respond to the requirements of the telecommunications equipment. However, due to the odd appearance of the roof-mounted solar panels and its imposing height, it would appear as a bulky, dominant and incongruous feature in this setting. It would be a visually intrusive addition to the locality and lead to a cluttered streetscene when seen from various positions along Euston Road. The siting and appearance of the development would therefore harm the character and appearance of the area.

*Pedestrian safety*

26. This part of Euston Road was busy with a significant flow of pedestrians. Given the proximity of Euston, Kings Cross and St Pancras Stations as major transport nodes, the adjacent cafes, as well as the number of offices and university buildings in the vicinity of the site, it is anticipated that those flows would increase at peak times. There is also a noticeable amount of tourists in this area, many wheeling large items of luggage.

27. The proposed structure would reduce the effective width of the pavement. The primary test provided by the appellant for establishing the suitability of the appeal site, (derived from the Transport for London document Pedestrian Comfort Guidance) suggests that the footway of a pavement with high flow should be 5.3m in width rather than 4.6m as shown on the plans. Therefore, given the busy pedestrian flows, I consider that the proposal's siting would impede pedestrian movement and adversely affect pedestrian safety.



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## **Appeal E: 7 High Holborn, London WC1V 6DR**

### *Character and appearance*

28. The proposed development would be sited on a stretch of pavement along the north side of High Holborn, around 30m from Chancery Lane Underground Station and close to the junction with Grays Inn Road. The area is characterised by a mix of modern office buildings with shops and cafés on the ground floor, and historical buildings.
29. The site is directly adjacent to the entrance of the offices at 7 High Holborn. The proposal would be close to a retail kiosk, a bus stop, a public street map panel and a lamppost. I recognise that the style of the proposal would be functional and its height responds to the requirements of the telecommunications equipment. However, due to its imposing height and the odd appearance of the roof-mounted solar panels, it would appear dominant and incongruous in this setting. It would be a visually intrusive addition to the locality and, with the existing items of street furniture, would lead to a cluttered streetscene. The siting and appearance of the development would therefore harm the character and appearance of the area.

### *Pedestrian safety*

30. According to the primary test provided by the appellant for establishing the suitability of the appeal site, (derived from the Transport for London document Pedestrian Comfort Guidance) the footway should be 5.3m wide as it is a high flow area. Although the plans show the pavement is 5.6m wide this measurement is given for a part of the pavement wider than that where the box would be installed. As such I would not be confident the proposal would comply with this advice. Notwithstanding this, given the high footfall along this section of the pavement and the close proximity of the nearby Underground Station and bus routes, I consider that the proposal's prominent siting would unacceptably obstruct pedestrian movement, and hence impact on pedestrian safety.

## **Appeal F: 16 Proctor Street, London WC1V 6NX**

### *Character and appearance*

31. The site is located on the outer edge of a section of pavement along Proctor Street. It is a busy area with many shops and offices, and a constant stream of pedestrians. The adjacent properties have a canopy which protrudes from the front façade of the buildings by approximately 1.5m.
32. The proposed kiosk would be close to a bus stop, several lampposts, and a few kerbside trees which add value to the townscape. I recognise that the style of the proposal would be functional and its height responds to the requirements of the telecommunications equipment. However, due to the odd appearance of the roof-mounted solar panels and its imposing height, it would appear bulky, dominant and incongruous in this setting. It would be a visually intrusive addition to the locality and, in combination with the other items of street furniture and the projecting canopy, would lead to a cluttered streetscene when seen from various positions along Proctor Street. The siting and appearance of the development would therefore harm the character and appearance of the area.

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*Pedestrian safety*

33. According to the primary test provided by the appellant for establishing the suitability of the appeal site, (derived from the Transport for London document Pedestrian Comfort Guidance) the footway in such a high pedestrian flow area should be 5.3m in width. The plans show the pavement to be 4.8m. As such, the appellant's own evidence suggests that the siting of the proposal is inappropriate. Therefore, given the busy pedestrian flows, I consider that the proposal's siting would impede pedestrian movement and adversely affect pedestrian safety.

**Appeal G: 166 High Holborn, London WC1V 6TT**

*Character and appearance*

34. The proposed development would be sited on an area of pavement adjacent to 166 High Holborn, on the northern side of the road. The surrounding area is characterised by a mix of modern office blocks and historical buildings. To the west of the site, on the corner junction with Shaftesbury Avenue, is the Grade II listed Shaftesbury Theatre which is a prominent and distinctive building in the street scene. The site is also very close to the boundary of the Bloomsbury Conservation Area (BCA), to the west beyond Grape Street.
35. The proposal would be close to a cycle docking station, several bollards, mature trees, as well as a street map information panel, all of which are also outside the BCA. I recognise that the style of the proposal would be functional and its height responds to the requirements of the telecommunications equipment. However, due to its imposing height, greater than the other street furniture nearby, and the odd appearance of the roof-mounted solar panels, it would appear bulky, dominant and incongruous in this setting. It would be a visually intrusive addition to the locality and lead to a cluttered streetscene when seen from various positions along High Holborn. The siting and appearance of the development would therefore harm the character and appearance of the area.
36. Though the Council advise of the proximity of the site to the listed building and conservation area, they raise no specific objection to the effect of the development on those heritage assets and I have no reason to consider to the contrary.

*Pedestrian safety*

37. The proposed development would reduce the effective width of the pavement. According to the primary test provided by the appellant for establishing the suitability of the appeal site, (derived from the Transport for London document Pedestrian Comfort Guidance) the footway should be 5.3m wide in a high pedestrian flow area such as this. The evidence shows that the pavement here is 4.6m wide. As such, the appellant's own evidence suggests that the siting of the proposal is inappropriate. Therefore, given the busy pedestrian flows, I consider that the proposal's siting would impede pedestrian movement and adversely affect pedestrian safety.



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## Appeal H: 190 High Holborn, London WC1V 7BH

### *Character and appearance*

38. The proposed call box would be sited on the southern side of High Holborn, adjacent to No. 190. The appeal site is located in a busy commercial district, with many shops and entertainment venues in the vicinity. Most of the buildings nearby are tall modern office blocks. However, the neighbouring building to the east is the Grade II listed Holborn Town Hall which lies within the Bloomsbury Conservation Area (BCA).
39. This stretch of pavement is relatively devoid of street furniture, albeit there is a row of kerbside cycle stands nearby approximately 10 to 15 metres to the west of the appeal site. The minimal amount of street furniture allows for an ease of pedestrian flow and an uncluttered view of the listed building and the BCA to the east.
40. Although the design of the proposal would be functional and its height responds to the requirements of the telecommunications equipment, due to its imposing height and the odd appearance of the roof-mounted solar panels, it would appear as a bulky and incongruous feature in its uncluttered immediate context. It would be a visually intrusive addition to the streetscene when seen from various positions along this long road. The siting and appearance of the development would therefore harm the character and appearance of the area.
41. Though the Council advise of the proximity of the site to the listed building and conservation area, they raise no specific objection to the effect of the development on those heritage assets and I have no reason to consider to the contrary.

### *Pedestrian safety*

42. The proposed development would reduce the effective width of the pavement. According to the primary test provided by the appellant for establishing the suitability of the appeal site, (derived from the Transport for London document Pedestrian Comfort Guidance) in areas of high pedestrian flow, such as here, the footway should be 5.3m in width. The plans show the pavement to be 4.7m wide. As such, the appellant's own evidence suggests that the siting of the proposal is inappropriate. Therefore, given the busy pedestrian flows, I consider that the proposal's siting would impede pedestrian movement and adversely affect pedestrian safety.

### **Crime and anti-social behaviour**

43. Comments received from the Metropolitan Police Service suggest that the proposals could act as a focal point for anti-social behaviour. However, I have no substantive evidence that would support the view that the siting of call boxes facilitates a rise in crime, nor how this would be the case at these specific sites.
44. All the phone boxes would be located within busy pedestrian thoroughfares and would be open to wide public surveillance from both sides. Furthermore, as the design of the proposal does not include any enclosing walls, any criminal or anti-social activity would be readily observed by pedestrians and other road users. As such, I do not consider that the siting or appearance of any of the boxes would be likely to facilitate crime or anti-social behaviour in their areas.

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## **Other Matters**

45. My attention has been drawn to several other appeal decisions. I do not have the full details of the other cases and so cannot determine whether the circumstances are analogous to the proposals before me. Notwithstanding this, some of the other cases are within other local planning authority areas, and each site has its own setting. As such, the other appeal decisions referred to are not determinative points in favour of the proposal.
46. The appellant states the term 'clutter' would suggest the public call box is not needed. However, need and clutter are different considerations, and whilst the need for the boxes in principle is not disputed, the effect of their siting on their context is a matter that needs consideration.
47. The appellant states the design of the call box has been designed to be less visually intrusive and dominant than a previous version design. However, consideration of the appearance of the box in its context, as well as its siting, go beyond just the design of the development.
48. The benefits put forward by the appellant in favour of the proposed call boxes, including the public benefits, have been taken into consideration. However, these do not outweigh the harm associated with these proposals.

## **Overall Conclusions**

49. In all cases I have found the siting and appearance of the boxes would harm the character and appearance of their surroundings. In addition, in all cases except Appeal B, I have found the proposal's siting would be detrimental to pedestrian safety, and in that particular case the lack of harm to pedestrian safety does not outweigh the harm that would be caused to the character and appearance of that particular area. The lack of harm in respect of crime and anti-social behaviour does not lend positive weight to the developments.
50. In my considerations, I have regard to Camden Local Plan policies D1, which requires that development proposals must respect local context and character, G1 which states that the Council will deliver growth by supporting development that makes best use of its site with due regard to its surroundings, A1 which states that the Council will resist development that fails to adequately assess and address transport impacts, T1 which states that the Council will ensure that development improves the pedestrian environment, C5 which states that the Council will require development proposals to demonstrate that they incorporated design principles which contribute to community safety and security, and D2 which aims to ensure the character and appearance of heritage assets are preserved.
51. I have not had regard to Policy C6, which relates specifically to accessibility and therefore falls beyond the remit of Schedule, 2, Part 16, Class A, Condition A.3 of the Order.

## **Recommendation**

52. For the reasons given above and having had regard to all other matters raised, I recommend that all 8 appeals should be dismissed.

*Thomas Courtney*

APPEAL PLANNING OFFICER

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**Inspector's Decision**

53. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis all the appeals are dismissed.

*Andrew Owen*

INSPECTOR