



Appeal Decisions

Site visits made on 2 September 2019 by Alex O'Doherty LLB(Hons) MSc

Decision by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st January 2020

Appeal A - Ref: APP/X5210/W/19/3225164

Public Highway, 145-149 Tottenham Court Road, London W1T 7NE

Grid Reference Easting 529317, Grid Reference Northing 182210

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2018/3832/P, dated 6 August 2018, was refused by notice dated 24 September 2018.
 - The development proposed is a public call box.
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Appeal B - Ref: APP/X5210/W/19/3225168

Public Highway, 167-169 Shaftesbury Avenue, London WC2H 8AN

Grid Reference Easting 530037, Grid Reference Northing 181206

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Maximus Networks Ltd against the decision of the Council of the London Borough of Camden.
 - The application Ref 2018/3830/P, dated 6 August 2018, was refused by notice dated 25 September 2018.
 - The development proposed is a public call box.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal Procedure

3. The site visits were undertaken by an Appeal Planning Officer whose recommendations are set out below and to which the Inspector has had regard before deciding the appeals.

Procedural Matters

Scope of appeal decisions

4. This decision letter relates to 2 appeals for public call boxes, pursuant to Schedule 2, Part 16, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO'), where the proposals are identical. However, each appeal has been determined on its merits, with reference to observations taken on site.

Effect of the 2019 amending Regulations

5. The Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amended the GPDO by removing 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 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 all the appeals in this decision letter.

Development plan policies

6. The Council have referred to a number of development plan policies and associated documents. As the principle of development has been established through the grant of permission by the GPDO, prior approval appeals are not determined on the basis of s38(6) of the Planning and Compulsory Purchase Act 2004. However, I have taken the development plan policies and associated documents into account insofar as they are relevant to the prior approval matters of siting and appearance.

Need / lack of need

7. In addition to the GPDO establishing the principle of development, the National Planning Policy Framework ('the Framework') provides that decision makers should not question the need for an electronic communications system. Therefore, matters of need (including a lack of need) are not relevant, and have not been taken into account in the determination of these appeals.

Westminster judgment: 'dual purpose' test

8. *Westminster CC v SSHCLG & 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', and that a development falls outside the scope of Part 16, Class A if it is not 'for the purpose' of the operator's network. In *Westminster* the proposed kiosk was for a dual purpose of advertisement display and telecommunications function.
9. In the appeals before me, I have taken into account the submitted Opinion of Counsel regarding this matter and the description of the proposed public call boxes. 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.

Notification of determination

10. Regarding Appeal A only, at the time of its decision on the application for prior approval, the Local Planning Authority (LPA) did not send the applicant a copy of its decision, but only sent the applicant a copy of its Officer's Report. The applicant received a copy of the LPA's Decision Notice during the course of the appeal, several months later. Whilst the Officer's Report did provide an indication of the LPA's stance, it merely contained a recommendation, not the formal decision of the LPA. The LPA and the appellant were asked for their observations on this matter, and the observations received have been taken into account.
11. The prior approval procedure set out under the Part 16 makes no provision for any determination to be made as to whether the development would be permitted development in this scenario, and therefore the matter is outside of my remit.

Main Issues

12. With regards to both appeals, the main issues are the effect of the siting and appearance of the proposed developments on:
 - the character and appearance of the area, including the setting of the Seven Dials (Covent Garden) Conservation Area (Appeal B only);
 - pedestrian flow and safety;
 - community safety; and
 - in respect of Appeal B only, whether the development would be accessible for all to use.

Reasons for the Recommendations

Appeal A

Character and appearance

13. The character of the area is predominantly commercial, with long lines of retail stores and associated signage. Whilst this section of the footway is relatively clear of street furniture, in this commercial context, the proposal would not appear incongruous or out-of-place as it would be situated immediately adjacent to the retail units and a gym in a vibrant area of the city. Whilst other public call boxes exist on this road, they are sited a sufficient distance away not to be read in combination with the proposal. In terms of appearance, the materials used would not unduly conflict with the modern and largely utilitarian shopfronts.
14. Given the above, I conclude that the proposal would reflect the character and appearance of the area, in accordance with the aims of Policy D1 of the Camden Local Plan (LP) which, amongst other matters, requires development to respect local context and character.

Pedestrian flow and safety

15. The appellant's Site Specific Highways Analysis (SSHA) describes the appeal site as being an area of 'high flow', as defined by the Pedestrian Comfort Guidance for London: Guidance Document (Transport for London, 2010) (PCG). I concur with this assessment, particularly as at the time of my site visit this part of the street was extremely busy, with an extraordinarily large number of pedestrians both walking the street and going into the adjacent shops. I also observed a number of people waiting outside the gym and the retail units, thereby reducing the available space on the footway. Although a 'snapshot' in time, there is nothing before me to suggest my observations were untypical. Additionally, the nearby Warren Street Underground Station and the pedestrian crossing slightly beyond the appeal site attracts pedestrian activity along this part of the road including those waiting to cross the road safely.
16. There is no dispute that the existing footway within the vicinity of the appeal site is narrower than that recommended in the PCG for high levels of pedestrian flow, such as this part of Tottenham Court Road. The proposal would narrow the footway further in this location and would create a physical barrier to pedestrian movement. Taken with other street furniture nearby it is likely that its presence would result in congestion upon the footway and harm pedestrian flows. It could also lead to pedestrians stepping out into the road to avoid crowding where the footway narrows within the vicinity of the new call box. This would pose a risk to the safety and comfort of pedestrians using this stretch of Tottenham Court Road, particularly those in wheelchairs, the elderly, infirm, partially sighted and parents with small children and pushchairs.
17. In light of the above I conclude that the siting of the proposed structure would have an unacceptable effect on pedestrian flow and the safety of pedestrians, in conflict with Local Plan Policies G1, A1, C6 and T1 which collectively require development to protect the amenity of communities, provide access for all, including accessible routes between buildings and improve the pedestrian environment.

Community safety

18. Whilst I note the Council's concerns in this regard, it seems to me that in the absence of evidence otherwise that the comments made about the potential for anti-social behaviour appear to be generic in nature and are not related to the particular individual siting of the proposal. There is no specific evidence or reason to consider that the call box's presence would encourage crime or anti-social behaviour when taking into account its largely open design. Moreover, there would be natural surveillance of the call box, including by pedestrians in close proximity to it. In the absence of substantive evidence to demonstrate otherwise I conclude that the proposal would not have an adverse effect upon community safety. There would be no conflict with Local Plan Policy C5 which aims to make Camden a safer place.

Conclusion and Recommendation: Appeal A

19. Based on the above, and having regard to all matters raised, I recommend that the appeal should be dismissed.

Appeal B

Character and appearance

20. This section of the street is commercial in character with a minimal amount of street furniture. There is an existing telephone kiosk, street signs, and railings within the vicinity of the appeal site. The appeal proposal, with its modern and relatively slim-line design, would not appear out-of-place, and its size would not be out of proportion to the existing nearby street furniture. Whilst other public call boxes exist on this road, they are sited a sufficient distance away not to be read in combination with the proposal. In terms of appearance, the materials proposed would not unduly conflict with the modern and largely utilitarian shopfronts.
21. The appeal site is situated outside the Seven Dials (Covent Garden) Conservation Area (CA) but is close to the boundary and forms part of its setting. In accordance with the National Planning Policy Framework, I attach great weight to the conservation of the CA as a heritage asset. The significance of the heritage asset derives in part from its vibrant economic activity and the range and mix of building types and uses, and also the street layout with its informal spaces.
22. Due to its small footprint and relatively inconspicuous design, I consider that the new call box would have a neutral effect on the character and appearance of the CA. The significance of the CA as a heritage asset would be conserved by the proposal.
23. In light of the foregoing I conclude that the siting and appearance of the call box would respect the character and appearance of the area and would not be harmful to the setting or significance of the CA. The proposal accords with LP Policies D1 and D2 which require development to respect local character and context and preserve and, where appropriate, enhance Camden's rich and diverse heritage assets.

Pedestrian flow and safety

24. The appellant's SSHA describes the appeal site as being an area of 'high flow', as defined by the PCG. I concur with this assessment, particularly as at the time of my site visit this part of the street was very busy, both from pedestrians walking the street and going into the adjacent shops. Although a 'snapshot' in time, there is nothing before me to suggest my observations were untypical.
25. There is no dispute that the existing footway within the vicinity of the appeal site is narrower than that recommended in the PCG for high levels of pedestrian flow, such as this part of Shaftesbury Avenue. The proposal would narrow the footway further in this location which would restrict pedestrian flows in this busy area. Taken with other street furniture and a street tree nearby, the narrowing of the pavement at this point would be likely to create congestion and impede the movement of pedestrians particularly at busy times of the day.
26. Moreover, the call box would create a physical barrier to pedestrian movement and would be likely to result in some pedestrians stepping out in the highway to avoid crowding where the footway narrows within the vicinity of the new call box. This would pose a risk to the safety and comfort of pedestrians using this stretch of Shaftesbury Avenue, particularly those in wheelchairs, the elderly, infirm, partially sighted and parents with small children and pushchairs.
27. Accordingly, I conclude that the siting of the public call box in this location is not acceptable because it would have an unacceptable effect on pedestrian flow and safety, in conflict with Local Plan Policies G1, A1, C6 and T1 which collectively require development to protect the amenity of communities, provide access for all, including accessible routes between buildings and improve the pedestrian environment.

Community safety

28. Whilst I note the Council's concerns in this regard, limited information has been provided to substantiate this concern. The comments made regarding the potential for anti-social behaviour appear to be generic in nature and are not related to the particular individual siting of the proposal. There is no specific evidence or reason to consider that the call box's presence would encourage crime or anti-social behaviour when taking into account that the design of the proposal is not fully enclosed. There is natural surveillance of the site, including the flow of pedestrians.
29. I conclude that the proposal would not have an adverse effect upon community safety. There would be no conflict with Local Plan Policy C5 which aims to make Camden a safer place.

Accessibility

30. Whilst I note the concern raised that the call box would not be wheelchair accessible, the provisions of the GPDO only require me to assess the proposed development solely on the basis of its siting and appearance. As this matter does not fall within the specific scope of these issues relating to prior approval, I cannot take account of it as having a direct bearing on the appeal's outcome.

Conclusion and Recommendation: Appeal B

31. Based on the above, and having regard to all matters raised, I recommend that the appeal should be dismissed.

Alex O'Doherty

APPEAL PLANNING OFFICER

Inspector's Decisions

Appeal A

32. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Appeal B

33. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

RC Kirby

INSPECTOR