



Appeal Decisions

Site visits made on 24 March 2020

by **P W Clark MA(Oxon) MA(TRP) MRTPI MCMi**

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

Decision date: 27 March 2020

Appeal A Ref: APP/X5210/W/19/3231407

Public highway, 241 Camden High Street, London NW1 7BU

- 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 2018/5550/P, dated 6 November 2018, was refused by notice dated 19 December 2018.
 - The development proposed is installation of 1 x telephone kiosk on the pavement.
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Appeal B Ref: APP/X5210/W/19/3231440

Public highway, adj 1 Haverstock Hill, London NW3 2BP

- 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 2018/5563/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
 - The development proposed is a public call box.
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Appeal C Ref: APP/X5210/W/19/3231475

Public highway, adj 24 Haverstock Hill, London NW3 2BQ

- 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 2018/5554/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
 - The development proposed is a public call box.
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Appeal D Ref: APP/X5210/W/19/3231479

Public highway, 88 Avenue Road, London NW3 3HA

- 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 2018/5539/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
 - The development proposed is a public call box.
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Appeal E Ref: APP/X5210/W/19/3225170

Public highway, 27-28 Chalk Farm Road, London NW1 8AG

- 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 2018/3828/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

1. All five appeals are dismissed.

Procedural matter

2. All five applications were made before 25 May 2019 when the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations came into force. These regulations amended the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) so as to remove permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator but with transitional arrangements for cases already in hand. Thus, these five appeals are treated as if the changes to the GPDO had not been made.

Main Issues

3. All five appeals were refused prior approval on similar grounds; of character and appearance, highway safety, anti-social behaviour and convenience to wheelchair users. In addition, refusals of appeals A and E make reference to effects on nearby Conservation Areas and refusals of appeals B and D make reference to the setting of listed buildings. However, under the terms of the GPDO, only the siting and appearance of the apparatus can be taken into consideration.
4. Not a reason for refusal in any of the five cases but adduced in the Council's appeal statements in all five appeals is a questioning of the eligibility of all five proposals for consideration under the terms of the GPDO, with reference to the New World Payphones judgment of February 2019; [2019] EWHC 176 (Admin). That judgment held that a development which is partly for the purpose of an operator's network, and partly for some other purpose, is not development "for the purpose" of the operator's network, precisely because it is for something else as well.
5. For the above reasons, the issues in all five of these appeals are whether or not the proposal in each appeal is solely for the purpose of the operator's electronic communications network and, if so, the effects of the siting and appearance of

each proposal on the character and appearance of the area, highway safety, anti-social behaviour and convenience to wheelchair users. In the case of appeals A, B, D and E there is also the issue of the effect of the siting and appearance of each proposal on the significance of a nearby designated heritage asset to take into account.

Reasons

Purpose

6. All five appeals are accompanied by a Counsel's opinion. This draws on a written description of the design of the "Max 2" call box. The opinion asserts that none of the Maximus appeal cases include any advertising features and that the proposed development includes no elements that are there for the purpose of advertising.
7. It is correct that the written description of the design of the "Max 2" call boxes appended to the Counsel's opinion in each appeal case contains nothing which can be identified as included for the purpose of advertising. But, each of the five proposals before me includes drawings of the kiosks. One of the drawings in each appeal is a three-dimensional illustration of the proposal which shows an advertising display on one side of the unit (in the illustrations, these advertise the qualities of the Max 2 kiosk itself).
8. Each appeal has a second drawing. Although in all five cases they are given the drawing number MAX 2 ASSEMBLY Rev C, they are not identical in each case. Those for appeals A, B, C and D are dated 06.09.2018 and show on one side of the unit (in the place where an advertising display is indicated on the previous three-dimensional drawing) a visual area 1100mm x 1700mm and labelled "non-illuminated display panel". The drawing for appeal E is dated 18.07.2018 and does not have the notation "non-illuminated display panel" but is still shown to have an identical visual area 1100mm x 1700mm.
9. I therefore conclude that the visual area which is included as an element of each proposal in all five cases before me is an element included for the purposes of a non-illuminated display of what would amount to an advertisement as defined in the Act. The drawings before me therefore indicate elements included for the purposes of advertising. It follows that the proposals in all five appeal cases are partly for the purpose of an operator's network, and partly for some other purpose. Consequently, the proposal in each appeal is not development "for the purpose" of the operator's network, precisely because it is for something else as well. None of the proposals in each appeal should have been entertained as a prior notification application.
10. But they were entertained, registered as such and a decision was issued in each case. Those decisions are now the subject of appeals which are before me and so I give my conclusions on the issues they raise even though such consideration cannot override my findings that each appeal relates to a proposal which does not fall within the purview of permitted development.

Appeal A – 241 Camden High Street

11. This proposal would be sited a few yards outside the boundary of the Camden Town Conservation Area. But the essential character of the Conservation Area is that of a commercially vibrant town centre where the siting and appearance

of a telephone kiosk would not be out of place. The immediate surroundings of the location comprise late Georgian or early Victorian flat fronted terraces, some painted in a variety of colours. There are modern shopfronts at ground floor level, against which the modern appearance of the proposal would not be out of place. Commercial advertising banners hang from lamp posts. At upper floor levels, three-dimensional sculptural adverts are mounted on the buildings. Neither the siting nor appearance of the proposal would cause any harm to the character or appearance of this locality, or to the significance of the nearby conservation area and would be consistent with Camden Local Plan policies D1 and D2 seeking a high quality of design, respecting local quality and character, integrating well with its surroundings and preserving the character of the nearby conservation area.

12. Although not evident on the day of my site visit, I am aware that crowds throng Camden High Street at the various times indicated in the Council's officer report and that a wide, clear, area of pavement is necessary to cope safely with the numbers of people. But the proposal would be sited on an area of pavement exceptionally widened to prevent parking and loading at a road junction. To either side of the junction, north and south, granite setts denote loading bays. When in use, these would obstruct pedestrian flow along the street far more than the telephone kiosk proposed. Moreover, the widened section of pavement is already provided with 1m square seating boxes and litter bins which provide obstructions to pedestrian flow. It is clear to me that the siting of the proposal has been chosen to take advantage of a section of paving which is intended for stationary pedestrian activities and is therefore appropriate. In this regard, its siting would comply with Local Plan policy T1 which, amongst other matters, seeks to ensure that pavements are wide enough for the number of people expected to use them.
13. I accept the comments of the police that the siting of this proposal, at right angles to the movement of people along the street rather than parallel to the kerb, together with its sizeable appearance, would provide opportunities for criminals to approach users of the kiosk unseen and so would present a risk to personal security. I also accept that the appearance of the kiosk does not appear to comply fully with British Standard 8300 for design of an accessible and inclusive built environment, referenced by the Council. In these respects the siting and appearance of the proposal would not comply with aspects of Local plan policies T1 requiring a safe pedestrian environment, C5 aiming to make Camden a safer place and C6 seeking to remove the barriers that prevent everyone from accessing facilities and opportunities. I conclude that, even if this proposal had fallen within the terms of the GPDO, I would have dismissed the appeal in any event because its siting and appearance would have been unacceptable in relation to those considerations.

Appeal B – 1 Haverstock Hill

14. Although this proposal is for a different type of phone box and so its appearance would be different, its siting would be identical to that previously considered in appeal reference APP/X5210/W/18/3211259, dismissed on 28 August 2019. Although the appearance of the proposal would be less bulky than the proposal considered in that appeal, I share the view expressed therein that the proposal would detract from and to some extent be incongruous with the tiled flank wall of the listed Underground station against which the proposal

would be seen. Although the Underground station does have commercial elements within and adjacent to it, these are concentrated on its Adelaide Road frontage. By contrast, the character of its frontage and that of adjoining properties on Haverstock Hill is one lacking commercial or otherwise active frontage. Consequently, both the siting and appearance of the proposal, involving a display panel, would be inconsistent with Camden Local Plan policy D1 seeking a high quality of design, respecting local quality and character, integrating well with its surroundings.

15. Moreover, the proposal would be sited on a part of the pavement which is narrowing as the kerb line recedes to form a bus stop layby. Although the parties disagree about the precise dimensions of the pavement, which would vary according to precisely where the measurement is taken, even the appellant's own submitted information shows that the effective width of the pavement would be reduced from 3.7m to 1.8m. This would be less than that commonly accepted as adequate for any location, let alone that where the evidence suggests a sizeable pedestrian flow from the Underground station and from the nearby secondary school at certain times of day. I therefore conclude that the siting of the proposal would not comply with Local Plan policy T1 which, amongst other matters, seeks to ensure that pavements are wide enough for the number of people expected to use them.
16. As with appeal A, the proposal would be sited at right angles to the pavement rather than aligned with the kerb which, together with its sizeable appearance, would provide opportunities for criminals to approach users of the kiosk unseen and so would present a risk to personal security. Its appearance does not comply fully with British Standard 8300 for design of an accessible and inclusive built environment, referenced by the Council. In these respects the siting and appearance of the proposal would not comply with aspects of Local plan policies T1 requiring a safe pedestrian environment, C5 aiming to make Camden a safer place and C6 seeking to remove the barriers that prevent everyone from accessing facilities and opportunities.
17. I conclude that, even if this proposal had fallen within the terms of the GPDO, I would have dismissed the appeal in any event because its siting and appearance would have been unacceptable in relation to the considerations set out above.

Appeal C – 24 Haverstock Hill

18. Although this proposal is for a different type of phone box and so its appearance would be different, its siting would be identical to that previously considered in appeal reference APP/X5210/W/18/3211264, allowed on 28 August 2019. That appeal concluded that the proposal then being considered did not clearly facilitate a dual purpose. It appeared as being solely for the purpose of the operator's electronic communications network. By contrast, the proposal before me clearly includes a display panel.
19. This location shares with appeal B a location which is one generally lacking a commercial or active frontage and so, notwithstanding the conclusion reached in appeal APP/X5210/W/18/3211264 that that proposed call box would not materially affect the quality of the street scene, my conclusion is that the siting of a call box here, involving a display panel, would be inconsistent with the generally non-commercial character of the site and so would be contrary to

Camden Local Plan policy D1 seeking a high quality of design, respecting local quality and character, integrating well with its surroundings.

20. On the other hand, although the parties dispute the width of pavement which would be left unobstructed by the proposal, I have no reason to disagree with the previous appeal assessment that the residual free area would be adequate to cope with the flow of pedestrians. I therefore conclude that, in this respect, the siting of the proposal would comply with Local Plan policy T1 which, amongst other matters, seeks to ensure that pavements are wide enough for the number of people expected to use them.
21. As with appeal A, the proposal would be sited at right angles to the pavement rather than aligned with the kerb which, together with its sizeable appearance, would provide opportunities for criminals to approach users of the kiosk unseen and so would present a risk to personal security. Its appearance does not comply fully with British Standard 8300 for design of an accessible and inclusive built environment, referenced by the Council. In these respects the siting and appearance of the proposal would not comply with aspects of Local plan policies T1 requiring a safe pedestrian environment, C5 aiming to make Camden a safer place and C6 seeking to remove the barriers that prevent everyone from accessing facilities and opportunities.
22. I conclude that, even if this proposal had fallen within the terms of the GPDO, I would have dismissed the appeal in any event because its siting and appearance would have been unacceptable in relation to the considerations set out above.

Appeal D – 88 Avenue Road

23. The character of this location is set by the wide (five-lane and bus lay-by) width of Avenue Road, the simple, extensive form and monotonous façade treatment of the Grade II listed Swiss Cottage Library behind the appeal site and the seven storey bulk of Regency Lodge and the rear of the Odeon Cinema opposite. Although the large scale of the space and its civic character is somewhat tarnished by the commercial signage associated with the car park in the base of Regency Lodge, the space could easily absorb a substantial piece of street furniture such as the proposed kiosk without harm to its character.
24. However, the impressive regiment of concrete fins which articulates the façade of the listed building sits upon a recessed podium within a setting of hedging and street trees. This setting is already compromised by the bus stop, bus shelter and advertisement hoarding standing in front of one of the entrances to the building. These give a clear indication of how the setting of the listed building would be further harmed by the siting of the phone kiosk including a display panel in front of the listed building, notwithstanding the clean modern lines of the kiosk otherwise complementing the modernity of the listed building. I therefore conclude that the siting of the kiosk would harm the setting of the listed building and hence the character of the area and would be contrary to Camden Local Plan policies D1 and D2 seeking a high quality of design, respecting local quality and character, integrating well with its surroundings and preserving the setting of designated heritage assets.
25. Commentary from the police asserts that this footway has a high pedestrian footfall. I daresay that might be true of the part of the street to the north,

between the Library and bus stop and the tube station and shopping centre but I am not convinced that it would hold true of the footway where the proposal is to be sited. In any event, immediately to the north, the footway is considerably narrowed by a bus layby and shelter to a far greater degree than would occur as a result of the siting of the phone kiosk proposed. The width of the footway left clear by the proposal would be adequate for even the highest footfall. I therefore conclude that, in this respect, the siting of the proposal would comply with Local Plan policy T1 which, amongst other matters, seeks to ensure that pavements are wide enough for the number of people expected to use them.

26. As with appeal A, the proposal would be sited at right angles to the pavement rather than aligned with the kerb which, together with its sizeable appearance, would provide opportunities for criminals to approach users of the kiosk unseen and so would present a risk to personal security. Its appearance does not comply fully with British Standard 8300 for design of an accessible and inclusive built environment, referenced by the Council. In these respects the siting and appearance of the proposal would not comply with aspects of Local plan policies T1 requiring a safe pedestrian environment, C5 aiming to make Camden a safer place and C6 seeking to remove the barriers that prevent everyone from accessing facilities and opportunities.
27. I conclude that, even if this proposal had fallen within the terms of the GPDO, I would have dismissed the appeal in any event because its siting and appearance would have been unacceptable in relation to the considerations set out above.

Appeal E – 27/28 Chalk Farm Road

28. Although this proposal is for a different type of phone box and so its appearance would be different, its siting would be identical to that previously considered in appeal reference APP/X5210/W/18/3211264, allowed on 19 December 2018. That appeal did not consider whether the proposal then in contention facilitated a dual purpose or not. Its accompanying drawings gave no indication of an advertisement display. It was treated as being solely for the purpose of the operator's electronic communications network. By contrast, the proposal before me clearly includes a display panel.
29. This proposal would be sited a few yards outside the boundary of the Regent's Canal Conservation Area which occupies a narrow strip of land opposite the site. But the essential character of the Conservation Area is that it concerns development associated with the canal and related railway. It turns its back on Chalk Farm Road itself. The immediate surroundings of the location comprise early Victorian flat fronted terraces with commercial frontages. There are modern shopfronts at ground floor level, against which the modern appearance of the proposal would not be out of place.
30. Neither the siting nor appearance of the proposal would cause any harm to the character or appearance of this locality, or to the significance of the nearby conservation area and would be consistent with Camden Local Plan policies D1 and D2 seeking a high quality of design, respecting local quality and character, integrating well with its surroundings and preserving the character of the nearby conservation area.

31. Although not evident on the day of my site visit, I am aware that crowds throng Chalk Farm Road at various times and that a wide, clear, area of pavement is necessary to cope safely with the numbers of people. But the proposal would be sited on an area of pavement exceptionally widened to prevent parking and loading at a road junction. To either side of the junction, north and south, granite setts denote loading bays. When in use, these would obstruct pedestrian flow along the street far more than the telephone kiosk proposed. Moreover, the widened section of pavement is already provided with 1m square seating boxes and litter bins which provide obstructions to pedestrian flow. It is clear to me that the siting of the proposal has been chosen to take advantage of a section of paving which is intended for stationary pedestrian activities and is therefore appropriate. Its siting would comply with Local Plan policy T1 which, amongst other matters, seeks to ensure that pavements are wide enough for the number of people expected to use them.
32. I accept the comments of the police that the siting of this proposal, at right angles to the movement of people along the street rather than parallel to the kerb, together with its sizeable appearance, would provide opportunities for criminals to approach users of the kiosk unseen and so would present a risk to personal security. I also accept that the appearance of the kiosk does not appear to comply fully with British Standard 8300 for design of an accessible and inclusive built environment, referenced by the Council. In these respects the siting and appearance of the proposal would not comply with aspects of Local plan policies T1 requiring a safe pedestrian environment, C5 aiming to make Camden a safer place and C6 seeking to remove the barriers that prevent everyone from accessing facilities and opportunities. I conclude that, even if this proposal had fallen within the terms of the GPDO, I would have dismissed the appeal in any event because its siting and appearance would have been unacceptable in relation to those considerations.

P. W. Clark

Inspector