



Appeal Decisions

Site visits made on 2 December 2019 by Andreea Spataru BA (Hons) MA

Decision by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 14th May 2020

All appeals

- The appeals are 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 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/19/3231421

Public Highway 121 Shaftesbury Avenue, London WC2H 8AD

Grid Reference Easting: 529957 and Grid Reference Northing: 181091

- The application Ref 2018/5545/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal B Ref: APP/X5210/W/19/3231420

Public Highway ST. Giles High Street ADJ. Central St Giles Piazza, London WC2H 8AG

Grid Reference Easting: 530039 and Grid Reference Northing: 181301

- The application Ref 2018/5561/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal C Ref: APP/X5210/W/19/3231470

Public Highway 70 Theobald's Road, London WC1N 3NR

Grid Reference Easting: 530725 and Grid Reference Northing: 181864

- The application Ref 2018/5560/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Appeal D Ref: APP/X5210/W/19/3231429

Public Highway 6 Grays Inn Road, London WC1X 8AT

Grid Reference Easting: 531130 and Grid Reference Northing: 181661

- The application Ref 2018/5559/P, dated 6 November 2018, was refused by notice dated 20 December 2018.
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Decisions

1. The appeals are dismissed.

Appeal Procedure

2. The site visit was 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. The appeals relate to proposals by Maximus Networks Ltd for the installation of a call box at 4 sites across the Borough of Camden. The proposed apparatus is identical in each case. Therefore, in the interests of conciseness, I have dealt with all the appeal decisions in the same letter.
4. Whilst the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019 amends the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) by removing permission for the installation, alteration or replacement of a public call box by, or on behalf of, an electronic communications code operator, this is subject to transitional and saving provisions. Therefore, for the purposes of these appeals, which were validly made, the proposals fall to be considered against the provisions of Schedule 2, Part 16, Class A of the GPDO, which refers to development 'by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network'.
5. The proposals before me were refused by the Council on grounds relating to siting, appearance, access and anti-social behaviour. However, the *Westminster*¹ judgement found that 'the judgement as to whether the call box, as applied for, comes within the scope of Class A has to be made before siting and appearance are considered' (paragraph 46). Whilst the Council determined the applications before the *Westminster* judgement was handed down, I note both the appellant and Council have referenced this judgement within their respective statements of case as to its effect on the bearing of the judgement upon the appeals. I have taken these comments into account in determining these appeals.
6. 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 kiosk 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'.
7. Whether or not the proposed call boxes are solely for the purpose of the operator's electronic communications network is a matter of dispute between the main parties. While not given at the time of the initial decisions, the Council recommends a further refusal reason for all appeals on the basis that the call boxes are not solely for the purpose of the operator's telecommunications

¹ Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin) (5 February 2019).

- network as required in Schedule 2, Part 16, Class A of the GPDO as they include advertising space.
8. The design of all the proposed call boxes is the same, comprising a freestanding steel-framed call box, constructed with steel casings and toughened glass, with roof-mounted solar panels on top of each side which double as a canopy. They would be approximately 3.1m high, with a footprint of around 0.219m length by 1.325m width. Both would comprise a two-sided structure of either black or dark grey appearance. While the orientation of the call boxes is not clear from the plans, one side contains the phone itself set in a recess while the other has a non-illuminated glass panel. Whilst deemed consent allows a non-illuminated advertisement on the glazed surface of one face of the call box, in these appeals, only the construction of the call boxes is being considered, and the appellant is not seeking advertisement consent. There is nothing within the evidence before me to indicate that the call boxes explicitly contain provision of advertisement space. The above factors, together, lead me to find that these appeal proposals should not be considered to constitute a dual purpose. Therefore, the prior approval considerations of siting and appearance must be considered.
 9. The provisions of the GPDO, under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed developments solely on the basis of their siting and appearance, taking into account any representations received. My determination of these appeals has been made on the same basis.
 10. I have noted the Council's concern that the call boxes would not provide a wheelchair accessible phone given that the telephone controls would be higher than 1m off the ground and that its features would not address disability issues amongst other things. However, the design of the call box and its accessibility is not a matter before me in the context of a prior approval appeal. Likewise, the Council's concern relating to the call boxes and anti-social behaviour issues goes beyond the scope of part A.3. Nevertheless, I have no conclusive evidence to demonstrate that the call boxes could act as a focal point for anti-social behaviour and that the siting of the call boxes is a contributory factor to the rise in crime.
 11. The Council has made reference in its decision notices to Policies D1, D2, G1, A1, C5, C6 and T1 of the London Borough of Camden Local Plan 2017. Similarly, the appellant has introduced Streetscape Guidance (SG) and Pedestrian Comfort Guidance for London (PCG), both published by Transport for London.
 12. However, applications for prior approval are determined in relation to the criteria set out within the GPDO and, as such, do not require regard to be had to the Development Plan. Nonetheless, although not determinative, I take account of the above-mentioned policies and documents in so far as they are relevant to matters of siting and appearance.

Main Issues

13. The main issues for all appeals are whether or not approval should be given in respect of the siting and appearance of the proposed development, with

particular regard to its effect on the character and appearance of the area, and its effect upon the safe and efficient operation of the highway.

Reasons for the Recommendation

Appeal A - 121 Shaftesbury Avenue

14. The appeal site is located in front of a retail store, on the roadside of the footway, adjacent to the Seven Dials (Covent Garden) Conservation Area. The proposed call box would be located in line with the existing street trees, on an uncluttered area of pavement. Given the uncluttered nature of this part of the street, the presence of the call box would be quite noticeable to pedestrians and road users. The consequence of this is that the proposed call box would appear as a prominent and intrusive feature that would be at odds with the prevailing open character of this part of the street. Thus, the development would be harmful to the character and appearance of the area.
15. During the time of my site visit the street was busy with traffic travelling past the appeal site along both carriageway directions. I have seen nothing to suggest my observations are untypical. The area around the site was also busy with pedestrians. The pedestrian surveys, as shown on the submitted documents, indicate that the site experiences high levels of pedestrian flows, with over 1200 pedestrians per hour according to the TfL's PCG. This level of pedestrian flow indicates that the recommended overall footway width should be 5.3 metres. The existing footway has a width of 3.8 metres, which falls below the recommended level.
16. The development would reduce the width of the footway between the call box and building frontage to approximately 2 metres. I note the analysis of the appellant's highways consultant that the proposal would accord with the SG produced by TfL and would not compromise pedestrian movement or highway safety. Nonetheless, it is noted that the above analysis assesses the existing footway width as narrower by approximately 3.3 metres than that recommended by the TfL's PCG. The proposal would narrow the existing footway that is already below the recommended levels, which would have an unacceptably adverse effect on pedestrian permeability in what is apparently a busy area.
17. Accordingly, the siting and appearance of the proposed call box would harm the character and appearance of the area. The proposal would also be detrimental to the safe and efficient operation of the highway. This harm justifies the refusal of prior approval and the dismissal of appeal A.

Appeal B - ST. Giles High Street ADJ. Central St Giles Piazza

18. The proposed call box would be sited outside Central St Giles Piazza, on the roadside of the footway, within proximity to the Seven Dials (Covent Garden) Conservation Area. The footway in the vicinity of the site accommodates a pavement sign board and a green electronics/communications box. On the opposite side of the road there are bins, street lighting and a kiosk. At the time of my site visit, pavement works were being carried out adjacent to the proposal. Nevertheless, it was still possible to assess the streetscene and the amount of pavement in this area.

19. When approaching the site from both directions along the street, the addition of the mass of the proposed approximately 3.119 metres high call box would, together with the existing street furniture, cumulatively result in an increasingly cluttered appearance to the pavement, and the call box would appear as an incongruous feature that would harm the character and appearance of the area.
20. During the time of my site visit the street was busy with traffic travelling past the appeal site along both carriageway directions. I have seen nothing to suggest my observations are untypical. The area around the site was also busy with pedestrians. The pedestrian surveys, as shown on the submitted documents, indicate that the site experiences high levels of pedestrian flows, with over 1200 pedestrians per hour according to the TfL's PCG. This level of pedestrian flow indicates that the recommended overall footway width should be 5.3 metres. The existing footway has a width of 4.6 metres, which falls below the recommended level.
21. The development would reduce the width of the footway between the call box and building frontage to approximately 3 metres. I note the analysis of the appellant's highways consultant that the proposal would accord with the SG produced by TfL and would not compromise pedestrian movement or highway safety. Nonetheless, it is noted that the above analysis assesses the existing footway width as narrower by approximately 2.3 metre than that recommended by the TfL's PCG. The proposal would narrow the existing footway that is already below the recommended levels, which would have an unacceptably adverse effect on pedestrian permeability in what is apparently a busy area.
22. Accordingly, the siting and appearance of the proposed call box would harm the character and appearance of the area. The proposal would also be detrimental to the safe and efficient operation of the highway. This harm justifies the refusal of prior approval and the dismissal of appeal B.

Appeal C - 70 Theobald's Road

23. The proposed call box would be sited outside 70 Theobald's Road, in line with existing street trees, on a relatively wide and uncluttered area of pavement, adjacent to the Bloomsbury Conservation Area. The uncluttered nature of the pavement and space in front of the building is simple and unified. It provides a spacious feel to this part of the urban landscape and makes a positive contribution to the character and appearance of this part of the street.
24. Given the spacious nature of this part of the street, the presence of the call box would be quite noticeable to pedestrians and road users. The consequence of this is that the proposed call box would appear as a prominent and intrusive feature that would be at odds with the prevailing open character of this part of the street. Thus, the development would be harmful to the character and appearance of the area.
25. The site is located on the pavement of a fairly straight stretch of highway, in line with the existing trees and street lighting. Given this, the proposed call box would not significantly intrude on the sight lines of motorists travelling along Theobald's Road and there would remain a sufficiently wide unobstructed footway between the development and the building edge for pedestrian

movement to not be significantly hindered. Thus, the safe and efficient operation of the highway would not be harmed.

26. Nevertheless, for the above reasons, the siting and appearance of the proposed call box would harm the character and appearance of the area. The lack of harm to highway safety is a neutral matter that does not outweigh the above consideration. This justifies refusal of prior approval and the dismissal of appeal C.

Appeal D - 6 Grays Inn Road

27. The appeal site is located on a section of pavement that is close to the junction of Grays Inn Road with High Holborn and in proximity to Chancery Lane tube Station. In this area are a variety of items comprising the street furniture, such as traffic signs/signals, street lighting, bins and a bus shelter. Mature street trees are set into the pavement, on the roadside of the footway. At the time of my site visit, the site adjacent to the proposal was enclosed by hoarding due to construction work taking place. Nevertheless, it was still possible to assess the streetscene and the amount of pavement in this area.
28. During the time of my site visit the street was busy with traffic travelling past the appeal site along both carriageway directions. I have seen nothing to suggest my observations are untypical. The area around the site was also busy with pedestrians, with particularly noticeable pedestrian flows to and from the tube station. When approaching the site from both directions along the street, the addition of the mass of the proposed approximately 3.119 metres high call box would, together with the aforementioned elements, cumulatively result in an increasingly cluttered appearance to the pavement and the wider streetscene. Therefore, the proposed call box would harm the character and appearance of the area.
29. The pedestrian surveys, as shown on the submitted documents, indicate that the site experiences high levels of pedestrian flows, with over 1200 pedestrians per hour according to the TfL's PCG. This level of pedestrian flow indicates that the recommended overall footway width should be 5.3 metres. The existing footway has a width of 5.6 metres, which accords with the recommended level.
30. The development would reduce the width of the footway between the call box and building frontage to approximately 2.4 metres. I note the analysis of the appellant's highways consultant that the proposal would accord with the SG produced by TfL and would not compromise pedestrian movement or highway safety. Nonetheless, it is noted that the above analysis assesses the existing footway width as narrower by approximately 2.9 metres than that recommended by the TfL's PCG. Given the high levels of pedestrian flows and the reduction in the width of the footway, the proposal would have an unacceptably adverse effect on pedestrian permeability in what is apparently a busy area.
31. Accordingly, the siting and appearance of the proposed call box would harm the character and appearance of the area. The proposal would also be detrimental to the safe and efficient operation of the highway. This harm justifies the refusal of prior approval and the dismissal of appeal D.

Other matter

32. The appellant has referred to several appeal decisions regarding similar proposals for the installation of public call boxes. However, I have considered each proposal before me on its own individual merits and the specific circumstances and context of each case.

Recommendation

33. For the reasons given above and having regard to all other matters raised, I recommend that appeals A, B, C and D should be dismissed.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

34. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeals A, B, C and D are dismissed.

S Ashworth

INSPECTOR