



Appeal Decision

Site visit made on 2 September 2019 by C Brennan BAE (Hons) M.PLAN

Decision by Andrew Owen BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th October 2019

Appeal Ref: APP/X5210/W/18/3211499

Land Adjacent to 90 Tottenham Court Road, London, W1T 4TJ

- 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 of the Town and Country Planning (General Permitted Development) 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 2018/0333/P, dated 21 January 2018, was refused by notice dated 15 March 2018.
 - The development proposed a call box.
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Decision

1. The appeal is 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 address on the application form states No. 90 Tottenham Court Road. However, this is misleading as the appeal site relates to land to the front of the building, not the building itself. For clarity and precision, I have used the address as included on the decision notice.
 4. I have taken into account the submitted Opinion of Counsel regarding the recent judgement of Westminster City Council v Secretary of State for Housing, Communities and Local Government & New World Payphones Ltd (2019) EWHC 176 (Admin), which considered the matter of dual purpose of call boxes for advertisement display and telecommunications use. From the materials before me, I find no evidence to suggest that the proposal includes elements that are there for the purpose of advertising. I consider that the proposal relates to the operator's electronic communications network only.
 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 condition 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
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the need 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.

Main Issues

7. The main issues are:

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

Reasons for the Recommendation

Character and Appearance

- 8. The appeal site is located on a wide pavement on the western side of a very busy commercial street. The appeal site is located adjacent to a busy bicycle lane. A large tree and lamp post are located just to the south. Within 15m to the north of the site, there is an existing call box, two large trees and several lamp posts. I observed during my site visit that, contrary to what is shown in the photographic illustration submitted as part of the application materials, the two Sheffield cycle parking stands shown just to the north of the appeal site have been removed and a large lamp post measuring 15-20m in height now stands in their place. New Sheffield stands are now located across the appeal site itself which would need to be removed to facilitate the call box. Some road signage to the north has also been removed since the photographic illustration was taken.
- 9. Due to its combined width, bulk and height, the proposal would appear as an overtly prominent feature within the streetscene. Seen in the context of the existing street furniture, particularly the existing call box to the north, the proposal would result in a cluttered effect within this section of pavement and would therefore cause harm to the character and appearance of the surrounding area.
- 10. The appellant asserts that public call boxes, like street furniture, are typical of a major city. However, the proposal would introduce a visually intrusive and bulky element within a particularly busy section of pavement where there is already considerable street furniture. As such, despite its neutral design, it is considered that the proposed box would not be acceptable in this location.
- 11. For the above reasons, I conclude that the siting and appearance of the proposal would cause unacceptable harm to the character and appearance of the surrounding area.

Pedestrian and Highway Safety

- 12. The appellant states that the chosen location was based upon a clear methodology derived from the Transport for London document Pedestrian Comfort Guidance, taking matters such as visual congestion, clutter, pedestrian

flows, etc into account. According to the primary test provided by the appellant for establishing the suitability of the appeal site, it is suggested that the width of the footway is 7.2m which therefore is compliant with the recommended minimum figure of 5.3m. However, this test fails to consider that a significant proportion of this width is used for tables and chairs for the nearby restaurants which narrow the effective width of the pavement considerably. In combination with these existing constraints, the proposal would obstruct pedestrian movement and create a bottle neck along this section of an especially busy pedestrian thoroughfare.

13. As such, I consider that the proposal would unduly restrict pedestrian movements along the adjacent pedestrian thoroughfare and therefore worsen pedestrian safety. The overcrowding that would result from this cramped pedestrian environment could then have highway safety implications for the adjacent cycle lane and road, which are both heavily used.

14. For the above reasons, I conclude that the siting and appearance of the proposal would cause unacceptable harm to pedestrian and highway safety.

Crime and Anti-Social Behaviour

15. Comments received from the Metropolitan Police Service suggest that the proposal could act as a focal point for anti-social behaviour. However, I have no conclusive evidence to demonstrate how this would be the case. Furthermore, I have no evidence that would support the view that the siting of call boxes is a contributory factor to the rise in crime.

16. The proposed location would be located within a busy pedestrian thoroughfare and would be open to wide public surveillance. Furthermore, as the design of the proposal does not include a front door and incorporates glass within the side panelling, any criminal or anti-social activity would be readily observed by pedestrians and other road users.

17. For the above reasons, I do not consider that the proposal would cause an increase in crime and disorder in the area.

Other Matters

18. The appellant has drawn my attention to various appeal determinations for similar development in support of the proposal. However, as the full details and circumstances of these appeals are not before me, I am unable to draw direct parallels between these cases and the current proposal. In any case, as each appeal must be determined on its own merits, I give little weight to these other cases.

Conclusion and Recommendation

19. Although I have found that the proposal would not cause an unacceptable level of harm in respect of increasing the levels of crime and anti-social behaviour in the area, I do not consider that they outweigh the harm the proposal would cause to the character and appearance of the area, and pedestrian and highway safety.

20. Insofar as they relate to siting and appearance, I have regard to Local plan policies D1 of the Local Plan 2017 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, and C5 which states that the Council will require development proposals to demonstrate that they incorporated design principles which contribute to community safety and security. 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.

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

C Brennan

APPEAL PLANNING OFFICER

Inspector's Decision

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

Andrew Owen

INSPECTOR