

Appeal Decision

Site visit made on 11 October 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 1 November 2016

Appeal Ref: APP/H5390/G/16/3143754

99 Fulham Palace Road, London W6 8JA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a Discontinuance Notice (DN) relating to the use of a site for the display of an advertisement with deemed consent.
 - The appeal is made by Mr Ali Hakkaki against discontinuance action by the Council of the London Borough of Hammersmith and Fulham (the LPA).
 - The Council's reference is 2015/01458/ADVERT.
 - The discontinuance notice is dated 24 November 2015.
 - The site is on the flank wall of 99 Fulham Palace Road at first and second floor levels.
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Decision

1. I dismiss the appeal. I direct that the Discontinuance Notice shall come back into effect immediately and that the use of the site for the display of advertisements with deemed consent shall cease within four weeks of the date of this decision.

The Main Issue

2. The main issue is whether the continued use of the site for the display of advertisements with deemed consent would be substantially injurious to amenity.

Reasons

3. The test under Regulation 8 of the 2007 Advertisement Regulations requires that there must be '*substantial injury*' to the amenity of the locality or a danger to members of the public'. This is a stricter test than that for consideration of whether express consent should be granted. It is on the basis of this stricter test that I have considered this appeal. There is no danger to members of the public.

4. The Council refers to Policy DM G8 of its Development Management Local Plan. However, the powers under the Regulations to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any other material factors. Although the policy is a material consideration in my determination of this appeal it cannot, in itself, be decisive.

5. The National Planning Policy Framework (NPPF) is a major material consideration and reiterates that amenity and public safety should be the only considerations. I have had regard to the presumption in favour of sustainable development set out in the NPPF, as well as to paragraphs 17 and 19. The NPPF places significant weight on the encouragement and support of economic development and it is acknowledged that outdoor advertising is a major contributor to commercial activity in the country.

6. Planning Practice Guidance (PPG) also refers to the more rigorous test of '*substantial injury*' being caused to amenity. In taking any action PPG indicates that LPAs need to precisely define the site and to justify their reasons for issuing a DN. In reaching my decisions in these cases I have taken into account all of the relevant matters set out in the NPPF and PPG.

7. The appeal site (No 99) is the flank wall of a three storey, end of terrace property, on the east side of Fulham Palace Road which is a London Distributor Road. The property is on the corner with Biscay Road. At the time of my visit the ground floor was in use as a café with outside seating to the frontage and on Biscay Road. It does not lie within a conservation area but the Council describes it as facing the Crabtree Conservation Area (CCA) which lies on the opposite side of the road. The fact that the CCA map is queried does not affect the decision and in any case the site lies outside of the area. The ground floor forms part of a neighbourhood parade of shops and the character of the area is mixed with commercial uses along the road and residential roads at right angles to it.

8. The site has a detailed advertisement planning history dating back to 1966 and 1983. The present 48 sheet hoarding, which spans between first and second floor levels, is externally illuminated from the top and set within a white frame. The top of the hoarding lies just below the eaves level at the top of the flank wall and the bottom frame is approximately 1m above the cornice of the decorated shop frontage, which includes a corbelled feature and pedimented side doorway. At the time of my visit the advertisement content was related to a local property company.

9. On behalf of the appellant it is stressed that Fulham Palace Road is a very busy road which acts as a physical barrier between the appeal site and the CCA. It is stated that the wall of the appeal site faces south and so not directly towards the conservation area. It is therefore argued that any visual impact is indirect and marginal. In response to various references to the Council's statement (planning history and street scene improvements) it is stressed that a more rigorous test is necessary in discontinuance cases.

10. In support of the retention of the hoarding it is contended that the site is not sensitive; that the CCA commences some distance away from the site; that the current billboard fits into its setting; that the hoarding does not cut across any architectural features; that there have not been any public complaints; that flank wall advertising such as this is common in inner London and that the Council itself has installed some highly coloured commercial adverts on lampposts along the road.

11. It is further considered that the Council has not issued sufficient reasons for serving the DN and that its statement falls short of indicating why the site is considered to cause '*substantial injury*' to amenity as required by the regulations, the NPPF and PPG. It is not considered that the DN is as precise, clear, full and unambiguous as it should be if, as a legal document, it is taking away consent.

12. However, I disagree with these arguments. In my view the Council has clearly set out its reasons for issuing the notice. I agree with the Council that the position of the hoarding is prominent and I do not accept that the road forms a barrier between the site and the CCA. The hoarding is at a height which only just stops short of the eaves. It more or less fills the upper part of the flank wall; it dominates the street scene and can be seen from some of the nearby houses in Biscay Road. In the context of this particular site and having noted the relationship of the hoarding to the host building and proximity to the nearest house, I agree with the Council that any hoarding of this size and in this position would result in '*substantial injury*' to amenity.

13. Although this hoarding does not cut across any architectural features of the premises, when seen from the south and south west it is perceived as an out of scale, obtrusive and dominating feature along this part of Fulham Palace Road. It clashes with the fine detailing of the shop front and the rest of the building. I do not agree with the contention that the road forms a barrier. Due to its height on the flank wall the hoarding/site is distinctly noticeable. During my visit when I viewed it from the

opposite side of the road the only time it was screened from view was when double decker busses stopped at certain points along the road. The building frontage could also be seen at the same time as the flank wall from certain positions along the road.

14. I, therefore, share the Council's concerns about the effect that this particular advertisement site/hoarding has had on the character and appearance of this part of the Borough. I consider that the Council has fully justified its reasons for issuing the notice and that the advertisement hoarding is a large conspicuous and discordant feature on this flank wall. Due to its excessive scale it detracts markedly from the host building and fails to respect the architectural features of the building and the street scene itself.

15. Over recent years the Council has strived to improve the quality of the environment for residents and commercial users alike. Other sites have been developed and improved and the Council's Street Scene Improvements scheme continues to work its way through the Borough from its southern gateway at Putney Bridge towards Fulham Palace Road and the centre of Hammersmith. Due to its overall size and positioning, this panel detracts markedly from the present-day appearance of this part of Fulham Palace Road and should not be allowed to remain in place.

16. Whilst acknowledging that there may not have been any specific individual complaints about this particular hoarding, the 500 member Fulham Society has complained about the harm caused by the hoarding. It supports the Council's actions with regard to discontinuance action on this site. The Society considers that the hoarding causes '*substantial injury*' to amenity of the locality as well as to views into and out of the CCA. This concurs with the Council's view and my own.

17. Thus, despite the fact that this site has been used for some considerable time and that income would be lost, these commercial matters and arrangements do not outweigh my concerns about '*substantial injury*' to amenity that the hoarding causes in this location. In my view, the adverse impacts identified above significantly and demonstrably outweigh the benefits of the continued display of this advertisement or the use of the site for the display advertisements. The appeal, therefore fails and the discontinuance notice is upheld.

Other Matters

18. I have considered whether or not to extend the compliance period. However, on the basis of the information before me, in my view there is insufficient justification to do so. This however, would not preclude the Council from agreeing a short extended time on the basis of completion of a specific rental period.

19. In reaching my conclusions in this case, I have taken into account all other matters raised by and on behalf of the appellant; by the Council and by other interested parties. These matters include the planning history of the site; the detailed grounds of appeal; the matters covered in the Council's statement and the representations from the Fulham Society.

20. However, none of these carries sufficient weight to alter my conclusion on the main point at issue and that the advertisement site causes '*substantial injury*' to amenity. Nor is any other factor of such significance to change my decision that the appeal should be dismissed and the Discontinuance Notice should be upheld as drafted.

Anthony J Wharton

Inspector