

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: 17 November 2016

Appeal Ref: APP/H5390/G/16/3142419
113 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 relating to the use of a site for the display of an advertisement with deemed consent.
 - The appeal is made by Clear Channel UK Ltd against discontinuance action by the Council of the London Borough of Hammersmith and Fulham (the LPA).
 - The Council's reference is 2015/01460/ADVERT.
 - The discontinuance notice is dated 30 October 2015.
 - The site is the flank wall of 113 Fulham Palace Road.
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Decision

1. I dismiss the appeal. I direct that the Discontinuance Notice (DN) 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.

Matter of clarification

2. It is stressed that there is an error in the DN in that the section '*Reasons For Issuing This Notice*' is incorrect because the panel cannot be seen on the approach 'northwards'. It is further contended that the panel does not have a 'long range of visibility' as suggested by the Council. It is considered on behalf of the appellant that the '*Reasons*' do not properly support the DN and that it must be quashed for failing to comply with the requirements of Regulation 8(3)(d).

3. Clearly the reference in the DN, referring to the view from long range on the approach '*northwards*' is wrong. It can only be viewed on the approach '*southwards*'. However, there is no doubt which panel is being referred to in the Council's appeal statement. It has also been obvious to the appellant from the start that the DN refers to the panel on the flank wall of No 113 Fulham Palace Road as opposed to any other. The appeal and the grounds pleaded were made on that basis.

4. Both parties, therefore, are fully aware of the subject of this DN. I do not consider, therefore, that any injustice has been caused by the typographical error which, in any case, the Council had corrected in its appeal statement. The DN contains all of the necessary elements on its face and I do not consider that the error has rendered it a nullity or that it is invalid. I have proceeded to my decision on the basis of all of the representations made and on my visit to the site and the surrounding area.

The Main Issue

5. 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.

Introduction

6. 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 for an advertisement. It is on the basis of this stricter test that I have considered this appeal. There is no danger to members of the public and the appeal turns on the effect on amenity only.

7. The Council refers to Policy DM G8 of its Development Management Local Plan (DMLP). 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.

8. The National Planning Policy Framework (NPPF) is relevant and reiterates that amenity and public safety should be the only considerations relating to the control of advertisements. 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. These place 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.

9. 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.

The site and surroundings

10. The appeal site (No 113) 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 Beryl Road and the site faces north. At the time of my visit the ground floor of the premises was in use as a launderette and the advertisement hoarding was blank and without a specific advertisement. The site does not lie within a conservation area but is close to the Crabtree Conservation Area (CCA). 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, generally, wholly residential roads at right angles to it.

11. The non-illuminated poster panel measures 6m x 3m and is positioned at second floor level. An application for express consent for the continued use of the wall for an advertisement station was refused in 1966 (1966/00469/HIST). The Council served S330 requisition notices on the freeholder and the advertising company. It is stated that the panel has been operated for a period in excess of 10 years and the Council accepts that it benefits from deemed consent.

Reasons

12. It is contended on behalf of the appellant that the site has been in use for many, many years; that there have been no complaints and that there has been no change over that period in the site or the surroundings. The advertisement is in part of a shopping area and is considered to be an acceptable commercial feature. Due to the curvature in this part of the road the site it is indicated that the site only has a very limited range of visibility and, because Beryl Road is at right angles to the main road, the site has very little prominence. With regard to the CCA it is contended that the site is '*barely seen with this area*' and that it would be difficult for any passer-by to distinguish one side of the road from the other.

13. It is also stressed that the Council has failed to refer to other sites in the Borough where consents have been granted adjacent to, and within, other conservation areas, as well as adjacent to listed buildings. It is indicated that this appeal panel is unlit; is not near to a listed building; is at a low level compared with some granted consent and is in any case not contrary to policy. It is contended that the Council has been inconsistent and contradictory in making its advertisement decisions throughout the Borough.

14. The panel is not considered to be out of scale and is considered to accord with PPG in that it is nowhere near a listed building; it is within a commercial frontage; in a major city; between terraces of three storey buildings and adjacent to a busy London thoroughfare. It is considered to be wholly in keeping with the present visual amenity of this mixed use neighbourhood and cannot be seen travelling northwards. It only has minimal range visibility travelling southwards and limited views from outside of variously numbered properties along the road. People generally like poster panels. They are bright, artistic and informative and bring vitality to the street scene.

15. Reference is made to the NPPF and it is contended that its economic policies; its policies relating to amenity; its policies relating to the preservation and enhancement of the natural and built environment and its advice on Advertisement Control (paragraph 67) all support the retention of this particular Advertisement hoarding. With regard to the CCA, reference is made to the Council submitting differing plans which do not show the appeal site and do not show that the area is opposite to the appeal site. The other appeal decisions referred to by the Council cannot be seen from No 113 and, in any case, each must be assessed on its merits.

16. Having seen this particular hoarding and its high level position on the flank wall I disagree with the arguments put forward by the appellant. I accept that it cannot be seen when travelling north along Fulham Palace Road and that it lies close to a bend in the Road. However, when travelling south it appears suddenly and most conspicuously at a high level above the wrap around launderette function. I consider that it is one of the most obtrusive hoardings that I have seen. Not only does it completely dominate the north elevation of the building, it crudely and harmful extends beyond, and cuts across, the gable rooflines to the building. It is also visible from some of the dwellings in Beryl Road.

17. It may well not be seen when travelling north but the sudden, unexpected and harmful view when travelling south is, in my view, substantially injurious to amenity. Whilst accepting that the NPPF aims to encourage the economy, including that related to outdoor advertising, there are two other dimensions to sustainable development which must be met. These are the social and environmental roles. On the first one I do not consider that that this particular hoarding helps to create a high quality built environment. On the contrary, I consider that it is a most visually intrusive fixture which detracts markedly from the features of the host building and the visual amenity of this part of Fulham Palace Road.

18. On the second I do not accept that the hoarding protects or enhances the built environment of this part of the Borough. I do not accept that it is 'wholly in keeping' with the visual amenity of the locality. In my view the opposite is the case. It is a large conspicuous and discordant feature, completely out of scale and out of keeping with the other attractive commercial elements. It is also contrary to that part of the NPPF which requires good design (section 7). In this case a 'good design' would not cut across the gable roof line of the building in such a blatant way. In conclusion I consider that the panel is out-of-keeping; excessive in scale and fails to respect the

architectural features of the building (particularly the first floor windows and the roof line) and the street itself. It is therefore 'substantially injurious' to amenity and the DN will be upheld.

19. Over recent years the Council has strived to improve the quality of the environment for residents and commercial users alike. Nearby sites have been developed and improved and the Council's Street Scene Improvements scheme continues the Council's aims to improve the quality, appearance and character of the locality. 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.

20. Whilst there may not have been any individual complaints about the hoarding the 'Hammersmith and Fulham Historic Building Group' stresses that the appeal hoarding is grossly out of scale and pays no respect to the profile of the flank wall at No 113. The 500 member Fulham Society also supports the Council's DN action.

21. 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 its harmful impact 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 display.

Other Matters

22. In reaching my conclusions in this case, I have taken into account all other matters raised by the appellant; by the Council and by other interested parties. These matters include the planning history of the site; the initial grounds of appeal and the appellant's final comments dated 4 February 2016.

23. 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