

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/16/3150305

381 New Kings Road, London SW6 4RL

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) 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 JC Decaux UK Limited against discontinuance action by the Council of the London Borough of Hammersmith and Fulham (the LPA).
 - The Council's reference is 2015/01839/DISCON
 - The discontinuance notice is dated 17 March 2016.
 - The site is the flank wall of 381 New King's Road at first floor level.
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Decision

1. I dismiss the appeal and direct that the Discontinuance Notice (DN) should come 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 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. It is agreed that there is no danger to members of the public.

4. 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.

5. The National Planning Policy Framework (NPPF) 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.

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 decision in this case, I have taken into account all of the relevant matters set out in the NPPF and PPG.

7. The appeal site is the flank wall of No 381 which is a two storey end of terrace property with a rear mansard roof extension; a raised flank wall and a two storey rear back addition. It is located on the southern side of the road at its junction with Grimston Road and lies within the Fulham Park Gardens Conservation Area (FPGCA). Some of the buildings to the north east and on the opposite side of the road (136-158) are on the Register of Local Buildings of Merit. The Council also refers to two listed buildings but these are further away from the appeal site. At the time of my visit the flank wall was scaffolded and some works were being carried out to the property. However the 48 sheet poster hoarding could clearly be seen fixed to the flank wall. There is another advertisement hoarding on the opposite side of Gaston Road on a fenced off vacant site which is adjacent to No 379 New King's Road. This is the subject of a separate DN issued by the Council.

8. The character of the area is mixed, with pockets of commercial premises at ground level; some with residential uses above. However, along this section of New King's Road it is also predominantly residential at ground floor level. The appeal property is at the end of a row of 12 dwellings and there is a similar residential terrace on the opposite side of the road. The side roads off New King's Road, including Grimston Street (beyond the railway line), are also predominantly residential. Most of the commercial signage along the main road is at ground floor level and not in the immediate vicinity of the appeal site.

9. Express Consent was granted in the 1950s for the display of a poster panel on the flank wall but the advertisement was removed some time before 1984. The current non-illuminated hoarding is 6m x 3m and Express Consent has not been sought for the display. In response to a S330 notice, the advertising company advised that it had been in place for over 10 years and the Council accepts that it benefits from deemed consent under Class 13 of the Regulations.

10. In support of the retention of the hoarding it is confirmed that the site has been in use for over 40 years without any evident harm to local visual amenity. It is non-illuminated and is considered to fit neatly on to this side wall with a low impact on the locality which includes some commercial uses both on New King's Road and Grimston Street. It is contended that the use of the site does not result in 'substantial injury' to amenity and that the scale of the building façade is sufficient to accommodate a panel of this size without it having a dominating effect. It is argued therefore that the character and appearance of the FPGCA is unaffected by the use, as are other heritage assets referred to by the Council. The power provided by Regulation 8 is referred to and in particular that DN action is intended to address the worst excesses of uncontrolled advertising.

11. It is stressed that unlike other available mechanisms in Planning Law, there are very limited compensation provisions for losses arising from DN action. It is also indicated that in relation to 'substantial injury' it needs to be shown that nothing short of complete cessation is necessary to overcome the harm. The council's statement of reasons for taking DN action are referred to and it is contended that if the position of the hoarding is 'substantially injurious' because it is divorced from the ground floor activities, one must assume that relocation of the panel to the ground floor would address that issue.

12. The appellant refutes the proposition that any advertisement that is visible above the ground automatically results in 'substantial injury' to amenity simply by virtue of being seen by people. This assumption is considered to subvert the

essential requirement to assess the individual merits of any particular context. It is considered that the effect of the panel is neutral within the wider area and it can only be seen from limited viewpoints. References to the setting of the listed buildings at 190-192 New King's Road and the Kiln House at Burlington Road are considered to be specious. The properties are not visible from the appeal site and the use of this argument by the Council calls into question their judgement in suggesting that the advertising use of the site is substantially injurious.

13. I agree with the appellant's contention that the appeal site does not directly affect the settings of the nearby listed buildings. They are not viewed together and are further away from the appeal site than some of the buildings of local architectural and historic merit. However, the panel is in the middle of what is a predominant residential run of properties in the area and the nearest side roads are predominantly residential. I consider that it is substantially injurious to the amenity of the occupants of these nearby houses. I disagree with the other arguments put forward in support of the appeal and share the Council's concerns about the specific effect of this over-sized panel on the flank wall of what is an attractive Victorian dwelling house in this part of the Borough.

14. Turning to some of these other arguments, I totally disagree with the contention that the panel fits neatly on to the flank wall and that it has a low impact. When seen travelling towards Putney Bridge it is a dominant and obtrusive feature within this predominantly residential section of the road. The scale of the flank wall is indeed sufficient to take the actual size of the panel but it does so in a most negative, rather than positive manner. In my view the panel totally dominates the wall and neither preserves nor enhances the character and appearance of this part of the FPGCA. In my view it cannot be said to have had a neutral effect.

15. I agree with the appellant that the case should be assessed on its merits but I do not accept the contention that the advertisement feature might well be acceptable closer to the ground or that the Council has automatically concluded that any such panel at high level is unacceptable. As a matter of fact and degree I find that the panel at high level is substantially injurious to amenity and, because of its size and the location of the property, it would be substantially injurious wherever it were to be positioned on this flank wall. It would dominate the flank wall in any position that it might be placed and is out-of-keeping, excessive in scale and visually harmful to the flank brick wall of No 381. In any case I am only empowered to deal with this DN and with the hoarding as fixed.

16. Over recent years the Council has strived to improve the quality of the environment for residents and commercial users alike. Other advertisement sites in the Borough 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. There have also been several letters of support for the DN action taken by the Council from people living close to the site. This reinforces my view that, due to its overall size and positioning, this panel detracts markedly from the present-day appearance of this part of New King's Road and should not be allowed to remain in place.

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 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

18. 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 persons. 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 others.

19. 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 so as to change my decision that the appeal should be dismissed and that the Discontinuance Notice should be upheld as drafted.

Anthony J Wharton

Inspector