

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: 18 November 2016

Appeal Ref: APP/H5390/G/16/3150311

379 New Kings Road, London SW6 4RJ

- 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 advertisements 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 2015/01849/DISCON
 - The discontinuance notice (DN) is dated 15 March 2016.
 - The site is a vacant site adjacent to 379 New King's Road.
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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 for an advertisement. It is on the basis of this stricter test that I have considered this appeal. Although others have written to express their concerns that the site is a danger to public safety, the Council states that because it is a static illuminated advertisement it is not considered to be a danger to members of the public. There is no evidence to indicate to me that the Council's conclusions are unsound in relation to the effect on public safety. The appeal therefore turns on the effect on amenity only.

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) 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.

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 is a vacant site at the junction of New King's Road and Grimston Road. The 6m x 3m internally illuminated advertisement hoarding is fixed to a high timber fence (just over 4m) which first of all runs parallel to the road and then cuts across the site at 45°, before returning at a slightly lower level along Grimston Road. The hoarding is positioned on the 45° section of fencing. The land behind the enclosure around the site is in use as a commercial vehicle service area and it stretches from New King's Road, along Grimston Road, to the elevated rail line, a short distance to the south east.

8. There is another hoarding on the opposite side of Grimston Road on the flank wall of No 381 New King's Road. This is the subject of a separate DN issued by the Council. The site lies within the Fulham Park Gardens Conservation Area (FPGCA) and 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 at Nos 132 and 134.

9. The character of the area is mixed, with some commercial premises at ground floor level; some with residential uses above. However, along this section of the New Kings Road it is also predominantly residential at ground floor level. The appeal site lies between two rows of houses along the main road; one to the north east and one to the south west. 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.

10. Express consent has never been sought for the display of advertisement hoardings on the site. In response to a S330 notice, the advertising company advised that the site has been used for the display of advertisements for over 10 years. The Council accepts, therefore, that the site benefits from deemed consent under Class 13 of the Regulations.

11. In support of the appeal it is indicated on behalf of the appellant that the site is a longstanding one which has been in use for over 40 years without any evident harm to local visual amenity. It is contended that the impact of the advertising use on the locality is low; that the use of the site does not result in '*substantial injury*' to amenity and that the hoarding is set back from the building line along the main road. 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.

12. 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. In this case the low level positioning; the set back from the boundary; the ranch railed and gravelled

forecourt and the well-maintained site all contribute towards an acceptable and unarmful advertisement site. The council's proposition that the advertisement being visible to passers-by automatically results in harm to the conservation area (or therefore substantial injury to amenity) is refuted. Being seen is a fundamental requirement of all advertising and is not enough to make the case of substantial injury being caused to amenity.

13. It is further argued that the 48 sheet size is not an uncommon scale of advertisement found within a busy urban street context and that the display is only clearly seen by motorists approaching the site from the west. The poster is considered to add some visual interest and colour to the street scene as well as screening the commercial uses behind the enclosure. It is stressed that harm is not the same as substantial injury to amenity and in the appellant's view the current action by the Council (veiled in the banner of the public interest) is no more than an attempt to banish all forms of commercial advertising from the streets. This approach of 'sanitizing the street' is not considered to serve a planning purpose and Regulation 8 is being inappropriately applied.

14. Having seen the advertisement site in its overall context, I accept that the short stretch of Grimston Road between the main road and the railway line is commercial in use and that the hoarding assists in screening this site. However, in doing so it completely dominates and over-powers the residential uses along this predominantly residential section of the New King's Road. I disagree with the argument that because it is at low level it has a low profile. When approaching from the west I consider that the site is perceived as a most alien and obtrusive element within the street scene. It detracts markedly from the property at No 379 and those other properties in the residential terrace beyond.

15. Having seen the panel against the enclosure, I share the Council's concerns about the effect that it has had have on the character and appearance of this part of the FPGCA. In my view this particular hoarding neither preserves nor enhances the character or appearance of the area. It is so obtrusive and alien in its sudden appearance along this part of the road that in my view it is most certainly 'substantially injurious' rather than being just 'harmful' in a visual manner. Despite the concise reasons set out in the DN, I consider that the Council has fully justified its reasons for issuing the notice. The panel is a large conspicuous and discordant feature along this important route through the Borough and, in my view, the use of the site should not be allowed to continue.

16. I do not accept the appellant's contention that the LPA is simply trying to banish all forms of commercial roadside advertisements, or that Regulation 8 has been inappropriately applied. The Council has clearly indicated why the continued use of this particular site for the display of advertisements would cause substantial injury to amenity and, for the reasons set out above, I agree with their stance. Over recent years the Council has strived to improve the quality of the environment in all parts of the Borough 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 this part of the Borough.

14. The 'Hammersmith and Fulham Historic Building Group' supports the Council in its DN action. It stresses that the advertisement is sited midway between ground and first floor level and that it is grossly out of scale with its setting, overpowering and incongruous. It is considered that it neither preserves nor enhances the appearance or character of the FPGCA. The 500 member Fulham Society and other

individual residents have all written in support of the Council's DN action and set out similar reasons to those above. This reinforces my conclusion that the use of the site for the display of advertisements should not be allowed to continue.

15. Thus, despite the fact that this site has been used for over 40 years and that income would be lost, these commercial matters and arrangements do not outweigh my concerns about its harmful impact in this particular 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

16. 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 and persons. 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