

Appeal Decision

Site visit made on 25 October 2011

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/16/3150428

Electricity Sub-Station, Talgarth Road, London W6 8BJ

- 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 Primesight Ltd against discontinuance action by the Council of the London Borough of Hammersmith and Fulham (the LPA).
 - The Council's reference is 2015/1848/DISCON.
 - The discontinuance notice is dated 8 March 2016.
 - The site is the north elevation (fronting Talgarth Road) of the Electricity Substation adjacent to Wilson's Road, Talgarth Road, London W6 8BJ.
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Decision

1. The Appeal is allowed and I direct that the Discontinuance Notice, Reference 2015/01848/DISCON, dated 8 March 2016, be quashed.

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. It is accepted by the Council that there is no danger to members of the public and the appeal 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 part of the north elevation (fronting Talgarth Road) of the Electricity Substation (ESS) adjacent to Wilson's Road, Talgarth Road London. The ESS is located between Talgarth Road (a Strategic Route – the A4) and the London Underground railway line and lies within what is shown as part A of the Baron's Court Conservation Area (BCCA). The Council indicates that the ESS probably dates back to the 1930s when the Piccadilly line was extended from Hammersmith. To the west there are various uses including a petrol station, a college and housing. The prominent office building, The Ark is also to the west. To the east lies the London Academy for Music and Dramatic Arts (LAMDA). This is a locally listed building of merit and is currently shrouded in scaffolding. There is a temporary consent for an advertisement hoarding on the LAMDA site which was granted partly on the basis of enabling development for this heritage asset.

8. The site has a detailed planning history and this is set out in the Council's statement. Consent was refused for the display of a non-illuminated advertisement as far back as 1966. Another, for the display of an illuminated 48 sheet ultravision panel was refused consent on appeal in 1994. The most relevant and recent decision was refused on appeal in May of this year and this was for a 96 Sheet Digital LED display which was proposed following the removal of this display which is the subject of this DN. The current hoarding has deemed consent and comprises a 48 sheet static internal illuminated panel. It cuts across the lower of two stone or concrete horizontal bands which encircle the rest of the red brick structure. The second horizontal band is at parapet level and incorporates hopper heads.

9. It is contended on behalf of the appellant that the criteria to justify the discontinuance of use under Regulation 8 have not been demonstrated by the Council. It is not accepted that the continued use of the site would result in '*substantial injury to amenity*'. It is argued that the scale and character of the surroundings is strongly influenced by the size and nature of the dual carriageway, the A4. There are other long established, large scale, illuminated advertisements close to the site including prominent digital displays on the flyover to the west. The appeal site is the smallest of these and is off-set from the road which further reduces its prominence. It is further argued that large advertising displays are a part of the established character of this section of the A4. The Council's contention that it is prominent is, therefore, refuted.

10. With regard to views from 'residential properties across the road', it is indicated that the residential tower block, on the opposite side of the dual carriageway, is around 70m away; that the hoarding is close to street level and that the trees, between the block and the appeal site limit the impact of the hoarding. The road itself dominates and it is not accepted that there are prominent views from the residential tower block across the road. At higher levels in the block the distances increase and the viewing angle becomes more acute. It is considered, therefore, that the impact of the hoarding on the residential tower is minor at worst and certainly does not cause '*substantial injury to amenity*'.

11. The Council's assertion that the hoarding is displayed at an inappropriately high level and that the general activity is mainly confined to street level is also refuted by the appellant. The adjacent Petrol Filling Station contains elevated signage and the Council's own larger digital hoarding opposite the site to the west is elevated well

above street level. With regard to the impact on the character and appearance of the BCCA, it is stressed that its location is such that it is viewed as an outlying building on the northern tip of the area. The railway line results in the site not being seen in the context of the rest of the BCCA. The ESS is not considered to be an important element of the BCCA and is not mentioned at all in the extensive character appraisal document. It is considered, therefore, that the impact on the conservation area of this site does not amount to the stiffer test of causing '*substantial injury*'.

12. Finally it is not accepted that the advertisement hoarding is overly large, dominant and incongruous or that it fails to respect the character and architectural detail of the ESS. It is indicated that the building is of a plain and simple design and that, although the hoarding cuts across one of the horizontal bands, it does not appear awkward or too large on this elevation. There is considered to be sufficient space around the hoarding and that the strong horizontal emphasis of the building's proportions has not been lost.

13. Having seen the appeal hoarding and all of the others referred to in the representations I can understand some of the Council's concerns about its effect. It is indeed noticeable from the road and does lie within the conservation area. But it is not so directly visible from within the BCCA and in physical terms relates more to the dual carriageway road. It is on the edge of the BCCA and as noted by the previous Inspector it is facing the A4; separated from the rest of the area by the railway tracks and there is no visual relationship between the appeal site and the rest of the area which is predominantly residential and retains its historic character.

14. It can be seen from the opposite side of the road from the flats within the tower block but the main views will be from the road and the size of the panel is much smaller than others in the locality. The trees along this section of road also screen the lower windows of the block, whilst the upper floor windows are at a more acute angle to the north elevation of the ESS. The site is also seen against the commercial petrol filling station advertisements and other commercial uses as opposed to the residential uses further to the west.

15. Thus although it does have an effect on visual amenity this must be considered in its overall context and the question in a DN case is whether there is '*substantial injury to amenity*' as opposed to just some harm to amenity. In reaching my decision I have taken into account the previous Inspectors' decisions in relation to this site (APP/H5390/Z/16/3143591) and the one adjacent to Great Church Lane (APP/H5390/H/13/2198716).

16. The proposed advertisement for the first of these measured 3.548m x 12.692m (45m²) and the second 7.5m x 5m (37.5m²). For the reasons given in those two decisions, I agree with the Inspectors' conclusions in both cases that these two very large advertisements would have adversely affected the character of the area. I agree that the first (and largest) would have totally dominated the ESS in occupying approximately one third of the width of the building. The second decision turned, amongst other things, on the cumulative effect that the hoarding would have in that particular location and along Talgarth Road. However, there is a significant difference between those two cases and this DN case in that the former were not subject of the stricter test imposed by Regulation 8.

17. The appeal hoarding is much smaller at only 6m x 3m (18m²). It cannot, in my view, be said to dominate the host building. It is somewhat obtrusive but any advertisement hoarding of this size is bound to be obtrusive and in any case is meant to be seen. However, it takes up only approximately one sixth of the width of the building as opposed to one third and, although it cuts across the bottom of the two

horizontal bands, I do not agree with the Council that it is an awkward juxtaposition. The basic structure of the building can still be read clearly and, given its size, location on the wall and its height, I do not find the hoarding to be unacceptably incongruous, as suggested by the Council. It follows, in my view, that in terms of the street scene; its effect on nearby residential amenity and its overall impact on the building itself, this particular 6m x 3m static illuminated hoarding is not '*significantly injurious to amenity*'.

18. Turning to the visual effect on the BCCA, I acknowledge that such advertisements can be most harmful. However, each example must be assessed on its merits and in this case it is my view that the overall character and appearance of the BCCA would still be preserved by the display of an advertisement of this size on this elevation of the ESS. That is specifically because the elevation faces out of the BCCA; it is separated from its other parts by the railway tracks; there is no visual relationship between the hoarding and the rest of the area and it faces and relates to the A4. In effect the panel is neither seen nor perceived as affecting the rest of the residential area or the historic character of the BCCA.

19. I acknowledge that in 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. This is understandable when considering other more injurious hoardings in different locations. However, in this particular case I do not consider that the Council has shown that the continued display of an advertisement of this size on this site would result in '*substantial injury to amenity*'. The appeal therefore succeeds and the DN will be quashed.

20. I have noted that the 'Hammersmith and Fulham Historic Building Group' supports the Council's DN action and I have taken into account all of the matters set out in their appeal comments dated 23 July 2016. However, their comments do not affect my own assessment and conclusion that the panel does not result in '*substantial injury to amenity*' and that the appeal should succeed.

Other Matters

21. 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 detailed planning history of the site; the previous appeal decision relating to the site; the one for another nearby site; the detailed grounds of appeal; the detailed matters covered in the Council's Statement and Appendices and the photographic submissions.

22. However, none of these carries sufficient weight to alter my conclusion on the main point at issue and that the continued use of this particular advertisement site would not cause '*substantial injury to amenity*'. Nor is any other factor of such significance to change my decision that the appeal should be allowed and the Discontinuance Notice should be quashed.

Anthony J Wharton

Inspector