

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/16/3150493

J & J Motor Engineer Ltd, 405 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 the above 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 2016/00527/DISCON.
 - The discontinuance notice is dated 16 March 2016.
 - The site (over 70m in length) is the land which forms the frontage of the properties numbered 405 – 411 on the southern side of New King's 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.

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.

Matters of clarification, the site and background information

3. At the time of my visit there were no advertisement panel hoardings attached to the 4m high, 70m long (or thereabouts) timber fencing which encloses the commercial garage premises (valet, servicing and repairs) and forms the 'site' for the advertisements. I noted the two entrances, one located in the middle of the 'site' and another further to the south. I have also seen the photographic submissions set out in the Council's appeal statement, which also show the two entrances and five No 48 sheet (6m x 3m) illuminated hoardings posters. The appellant's statement also refers to five advertisements all of the same size and fixed to the enclosure fence at a height above the pavement (footway) of approximately 0.5m.

4. A discontinuance notice (DN) is directed at the actual site, rather than any particular advertisement. Thus, despite the fact that the five advertisement hoardings were not affixed to the 4m high fence when I visited the site, I must consider the appeal on the basis that this site has been used for the display of advertisements for over 10 years (not disputed by the Council) and that there is deemed consent for the use of the 'site'. It is on this basis that I have dealt with the appeal and having seen the representations of both the Council and the appellant I do not consider that my assessment on this basis will cause any injustice. I am only empowered to deal with the DN as issued for the whole site.

5. The site fencing encloses a plot of land on the southern side of this major route through the Borough. It borders a railway viaduct to the south and is currently occupied by car garage valeting/car serving uses. The uses take place beneath the railway arches and the forecourt areas to the front of the arches. The site lies within the Fulham Park Gardens Conservation Area (FPGCA) and opposite the Grade II Bottle Kiln at Fulham Pottery (Nos 190 – 192) New King's Road. The FPGCA Map and the listing entries were submitted with the Council's appeal Questionnaire.

6. The character of the area is mixed and, due to the proximity of Putney Bridge Underground Station, the immediate vicinity of the site is dominated by the railway connection to the station. On the opposite side of the road there is a terrace of two storey properties which are in commercial use at ground floor level with residential uses above. To the north of the site the road becomes increasingly more residential and even to the south there is a mix of commercial and residential uses.

Reasons

7. 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.

8. The Council refers to Policy DMG8 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.

9. 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.

10. 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.

11. It is indicated on behalf of the appellant that the site has been in use for more than 40 years and that (when in place) the five advertisements are all of the same size and illuminated by overhead trough lighting. The advertising revenue is stated to maintain the site enclosure as well as obscuring the view of the overt commercial activities conducted on the land. Reference is made to the commercial uses (with residential over) at ground floor level on the opposite side of the road. In the overall context of this part of New King's Road, the advertisement site is considered to be low key and the claim that '*substantial injury*' is being caused is not accepted.

12. It is stressed that the power provided by Regulation 8 is an uncompromising intervention intended to address the worst excesses of uncontrolled advertising. It is accepted that that it is a necessary tool to maintain the credibility of the planning system but one that imposes a corresponding constraint to ensure that that the

exercise of such power, which ultimately removes a lawful right in land, is justified in the public interest.

13. It is further noted 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 is referred to and it is not accepted that the Council has shown a clear articulation of how, in this case, '*substantial injury*' to amenity has occurred simply by virtue of the advertisements being seen by people. It is contended that the actual effects of the advertisements are 'neutral' within the area and that they provide a valuable screening function by keeping from view uses on the land which cause greater injury to amenity than the advertisements.

14. It is acknowledged by the appellant that advertising of this type or number at street level is unlikely to be granted express consent because it would be considered to be harmful to amenity. However, it is stressed that this is not the same as amounting to '*substantial injury*' or that it is in the public interest to compel the advertising to cease in its entirety. If the number is considered to be excessive, then a lesser number (for example three) would address this concern.

15. I agree with the appellant's contention that the appeal site does not directly affect the settings of the nearby listed buildings. However I share the Council's concerns that this site can be viewed from a long range on approach from the south along the road and that it detracts significantly from the character and appearance of this part of the FPGCA. Taking into account the length and height of the enclosure and having seen photographs of the hoardings, I agree with the Council that the cumulative effect of 5 hoardings results in an unduly dominant, conspicuous and obtrusive feature. I consider that the Council's reasons (although precise), set out in the DN, fully justify the action taken.

16. Material considerations and the weight to be attached to them can change over time in relation to any developments including outdoor advertising. Since these advertisement features first lined this length of the road, over 40 years ago, the area has been designated a conservation area; the Council has introduced its Council's Street Scene Improvements Scheme and the NPPF and PPG have been introduced. Sections 7 and 12 of the NPPF require good design generally and seek to conserve and enhance the historic environment. Within the overarching economic, social and environmental roles of the NPPF, the Core Planning Principles (CPP) set out what the planning system ought to be aiming to achieve.

17. I have already referred above to the impact that the advertisement site has had on the FPGCA and I also consider that the continued use of the site would be contrary to some of the CPPs of the NPPF. These include the fact that planning should: empower local people to shape their surroundings; should find ways to enhance and improve places where people live; should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings and should conserve heritage assets in a manner appropriate to their significance. This site in my view is out-of-keeping; massively excessive in scale and fails to respect the qualities architectural features of the building and the street itself.

18. 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 length size and positioning, this advertisement site detracts markedly from the present-day appearance of this part of the Borough; it is substantially injurious to amenity and should not be allowed to remain in place.

19. I have noted the suggestion that if 5 hoardings are considered to be over dominant then a reduction to 3 might be acceptable. However, as referred to above I am only empowered to deal with the DN as issued. This relates to the whole of the site and not to any smaller section(s). In finding the site to be unacceptable it is not for me to make a judgement as to whether or not a lesser number of hoardings fixed to the enclosure would cause 'substantial injury to amenity'. However, the appellant is not precluded from applying for Express Consent for an alternative site using part of this section of the road.

20. The 'Hammersmith and Fulham Historic Building Group' (HFHBG) and the 500 member Fulham Society (FS) support the Council's DN action and both indicate that, in their view, the site does cause 'substantial injury to amenity' on this curved section of the road. The FS is particularly concerned about the impact at night due to the fact that the hoardings are illuminated.

21. I share their views. 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 any use of the site for display of advertisements.

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 planning history of the site; the detailed grounds of appeal; the matters covered in the Council's statement and the other representations.

22. 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