
Appeal Decision

Site visit made on 23 January 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 January 2017

Appeal Ref: APP/P1235/G/16/3150022
Land at 68 Fortuneswell, Portland DT5 1LZ

- 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 advertisements with deemed consent.
 - The appeal is made by Insite Outdoor Advertising against discontinuance action by Weymouth and Portland Borough Council.
 - The Council reference is WP/ENF/14/00170. The Discontinuance Notice is dated 16 March 2016.
 - The site is an advertisement hoarding situated on a gable wall of No 68 Fortuneswell.
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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 30 days of the date of this decision.

The validity of the Notice

2. It is contended that the notice should be quashed because it was not served on the appellant company (Insite Outdoor Advertising: the leaseholder of the appeal site), in accordance with Regulation 8(3). The Council indicates that the name of JC Decaux was initially displayed on the hoarding and that this changed subsequently to Primesight. The Council carried out a Land Registry search and issued a request for Information (RFI) upon the registered owners of the site and on Primesight. There was no response from Primesight and although the owner of the site responded, no name(s) of tenants or leaseholders were provided.

3. However, Insite Outdoor Advertising submitted an appeal against the issuing of the DN on 10 May 2015 and confirmed in its appeal statement that it was the leaseholder and instigator of the operational licence agreement. This clearly gave the company a relevant interest in the land and the appeal was accepted as valid by the Planning Inspectorate.

4. Clearly the Regulation is in place to ensure that anyone with an interest in the land is not prejudiced by the issuing of a DN. In this case the notice was not correctly served. However, failure to serve a notice need not necessarily invalidate a notice. In enforcement cases the Secretary of State may disregard such a failure to serve if neither the appellant, nor the person required to be served has been substantially prejudiced by the failure.

5. In this case the appellant company, being the body which should have been served, was aware of the DN and made a valid appeal against its issue. Having considered all of the matters relating to this case I do not consider, therefore that Insite Outdoor Advertising has been substantially prejudiced and I am also satisfied

that the Council did all it could to establish the name of the owner, tenant or leaseholder. I am satisfied that in continuing to deal with this appeal no injustice will be caused. I now turn, therefore to the merits of the case.

Introduction and matters of clarification

6. 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 including relevant policies and guidance. Relevant policies cannot, however, be decisive in themselves.

7. In relation to discontinuance action, 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.

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 the NPPF also indicates 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 and I have paid special attention to the requirements of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

The Main Issue

10. 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

11. The appeal site is located on the gable wall of the three storey property at No 68 Fortuneswell, which is located to the south of the shopping precinct. During my site visit I noted that the advertisement site could be seen from various locations including a position from Belle Vue Terrace. Fortuneswell is characterised by a variety of tall buildings, some of which are in poor condition. However, despite their condition the buildings, including No 68, all add positively to the overall character and appearance of the Conservation Area in which they are located.

12. Having seen the advertisement site from both near and distant viewpoints, I share the Council's concerns about the particular impact that these two hoardings have had on the character and appearance of this part of the Conservation Area. When seen on the approach to the one way system down High Street it appears as a most strident and out-of scale panel on the gable wall of the property. It dominates the wall and takes attention away from the varying heights of the traditional buildings in this part of the area.

13. Clearly it cannot be seen by anyone driving along Fortuneswell, in a south easterly direction, but both drivers and pedestrians cannot fail to see it when

approaching the junction with High Street. I acknowledge that advertisements are meant to be noticed but this one is dominant and strident and detracts markedly from the character and appearance of this part of the conservation area. In my view this out-of-scale, over-sized and alien hoarding is 'substantially injurious' to amenity in this part of Portland.

14. Over recent years and particularly since Portland became an Olympic venue, the LPA has carried out many environmental improvements on the island including nearby locations to this site. The hoarding, along with others nearby (Victoria Square) was identified as being harmful when the conservation area appraisal was carried out in 2014 and I agree with that assessment.

15. I acknowledge that the site has been in use used for some considerable time and that income would be lost. However, these commercial matters do not outweigh my concerns about the substantial injury that it causes to amenity in this location. In my view, the adverse impacts identified above significantly and demonstrably outweigh the benefits of the continued display of advertisement on this site. The appeal, therefore fails and the DN is upheld.

Other Matters

16. In reaching my conclusions in this case, I have taken into account all other matters raised on behalf of the appellant; by the Council and by other interested persons. These matters include the history of the site; the initial appeal statement (dated May 2016); the preliminary matters and references to the validity of the notice; the agreements dated 1977 and 2001 and the photographic submissions.

17. 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