
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: 27 February 2017

Appeal Ref: APP/P1235/G/16/3152301

Land at South Side of Victoria Square, Portland, Dorset DT5 1AL

- 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 advertisements with deemed consent.
 - The appeal is made by Clear Channel UK Ltd against discontinuance action by Weymouth and Portland Borough Council.
 - The Council reference is WP/ENF/14/00169.
 - The Discontinuance Notice is dated 16 March 2016.
 - The site is situated on land at the south side of Victoria Square, Portland.
 - **Costs application:** A Costs application has been made on behalf of Clear Channel UK against the Council. This is the subject of a separate decision.
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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.

Introduction

2. 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. 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.

3. 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.

4. 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 as well as the duty set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

The Discontinuance Notice (DN)

5. On behalf of the appellant it is argued that the DN is '*so muddled (in terms of advertisement displays and use of the site), that the appellant is unclear as to what is concerned and what is required*'. The appellant's agent had requested a hearing (rather than the written representation procedure) to question the Council, in order that it could make exactly clear what is required and why the notice has only been served now, following over 60 years of express and deemed consent.

6. I have considered the above request but, having studied the notice and inspected the appeal site, I am satisfied that there is adequate relevant information before me (in the submissions from both the Council and the appellant) and that the written representation procedure is appropriate in this case. I now turn to the specific points (relating to the DN) made on behalf of the appellant.

7. Firstly, I cannot agree that the DN is '*wholly unclear*'. As indicated by the Council the First Schedule to the Notice clearly identifies the advertisement site as being the two hoardings. It also identifies the location both in description and with a location plan. Thus, from this schedule, it is clear that the DN is seeking to discontinue the use of these particular hoardings on this site for advertisement purposes.

8. The Second Schedule then indicates in some detail why the Council considers that the site, which lies within the Underhill Conservation Area (UCA), should not be allowed to continue to have deemed consent for the display of advertisements. As well as referring to the UCA designation (the process of which included a public consultation exercise), it includes extracts from the UCA appraisal document. This document specifically refers to the advertisement site and the DN also refers to the site being within a predominantly residential, rather than commercial area. The schedule then indicates that, due to the size of the hoardings in relation to the scale of the neighbouring buildings, their surroundings and their location at the gateway on to the Isle of Portland, they detract significantly from the amenity of the UCA.

9. Secondly, whilst noting the semantic arguments relating to some of the wording in the DN, from a full reading I fail to understand how it could be interpreted that it is the '*display of specific advertisements which is involved*'. It is clear to me that the DN is aimed at the continued use of the two hoardings for any advertisements.

10. Thirdly, I cannot understand why it is contended that the DN is '*fatally flawed in being so confused that the advertiser remains in doubt as to what is actually required*'. The rest of the case put forward on behalf of the appellant (the advertiser), in my view, makes it clear that the DN is fully understood. A valid appeal has been made and the arguments in support of the continued use of the site (the two hoardings) are competently put forward.

11. I do not consider that the DN is '*fatally flawed*' and I do not consider that any injustice has been, or will be, caused in dealing with it on its face. I note the contention that the Officer Report is '*incorrect in law*' and that '*there must be doubt as to whether the authority given is lawful*'. However, I do not consider that the points made can detract from the validity of the DN itself. In my view, the DN was correctly served, it does not need correction and, on a full reading, it should be clear to anyone that it seeks to discontinue the use of the appeal site (the two hoardings) for advertisements.

The Main Issue

12. 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.

The site and surroundings

13. The appeal site is located in a prominent position in Victoria Square which is referred to by the Council as the '*gateway to the Isle of Portland*'. It lies to the south east of the main road roundabout, and to the north west of the two terraces of housing along Chiswell and Queen's Road. On the approach, the two hoardings can be seen in conjunction with the Grade II listed Royal Victoria Lodge and the public house (The Little Ship) on the opposite side of Chiswell. The War Memorial is also close by to the north-east and on the opposite side of Queen Street.

The gist of the appellant's case

14. It is argued on behalf of the appellant that the two panels are seen against the flank walls of No 6 Chiswell and No 41 Queen's Road and that these walls are plain and discoloured. It is further indicated that the panels are visually contained below the roof gables of the property; that they are not dominant on the gables and that, if revealed; it is questioned that these undistinguished walls would in any way enhance the street scene or conservation area. It is argued that the Council has selectively quoted from the UCA appraisal and that the works carried out at the junction have been made at the expense of the appellant's land.

15. With reference to the '*gateway*' it is argued that Victoria Square has little unification of character; even less charm and little to offer. It is stressed that this is a large traffic gyratory system which is the dominant feature and that the surrounding buildings have become incidental. In particular the mis-match of premises in the north-east corner is referred to and the fact that views to the north and north-east are poor. It is contended, therefore, that the poster panels have not adversely affected the surrounding buildings including the listed buildings. It is indicated that the panels cannot be seen in the same view of the buildings and, in any case, the panels provide appropriate colour and life to a dreary traffic roundabout.

16. It is further noted that the UCA was designated in 1976; that the panels have been in place with consents from 1954 and 1966 and that they were up-dated in 2014. This is said to demonstrate that they are well-maintained and that they preserve the character and appearance of the UCA. They were in position in 1976 and are considered to '*pass the statutory test*' in the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

17. The NPPF is referred to and particularly the presumption in favour of sustainable development and it is considered that the panels '*meet the needs of the present without compromising the ability of future generations to meet their own needs*'. They are also required by the appellant and contribute to the economic health of the country. Paragraphs 17 and 19 of the NPPF are also referred to and the fact that it is accepted that outdoor advertising is an essential element of the commercial activity of the country. The loss of revenue to the Council in terms of the rateable value of the land/panels is stated to be another factor in favour, plus the fact that the Council may be forced to buy the land if it cannot be used for advertising purposes.

Reasons

18. Having seen the advertisement site from both near and distant viewpoints, I share the Council's concerns about the particular impact that this advertisement site (the two hoardings) has had on the character and appearance of this part of the UCA. When seen on the approach road to the roundabout, the two hoardings appear as obtrusive and alien elements within the street scene. I acknowledge that the road

works also tend to dominate this 'gateway' to Portland, but the advertisement hoardings look completely out of character against the domestic scale houses.

19. I do not agree with the contention that they do not dominate the walls of the two dwellings and consider the opposite to be the case. The hoarding to the end of the Chiswell property is particularly strident, even though it does not quite reach the eaves level of the property. Once on the roundabout, the other hoarding becomes more noticeable. Again, although not reaching so high up the eaves level of the adjacent house, it results in a most intrusive and discordant feature on the edge of this residential area and close to the other prominent buildings in the vicinity.

20. The angles of the two hoardings (when seen set against each other) exacerbate the alien appearance and at close quarters, when using the footway, they result in a dominating and overpowering effect against the two-storey dwellings. Having had regard to section 72 of the PLBCAA it is my view that this inappropriate advertisement site with its two panels neither preserves nor enhances the character or appearance of the UCA.

21. Having seen the site in the context of the listed buildings it is also my view that the hoardings are significantly harmful to the settings of these buildings. They can clearly be seen from the road in front of the Grade II Royal Victoria Lodge, as well as being seen in conjunction with the public house on the opposite side of Chiswell. This reinforces my view that the hoardings are indeed substantially injurious to amenity in this important and strategic approach to Portland.

22. It is evident from the submissions that there have been several changes in circumstances since the date that the advertisements were first granted consent in 1954 and 1966. I also acknowledge that they were in place in 1976 when the UCA was first designated. However, since then and particularly since Portland became an Olympic venue, the LPA has carried out many environmental improvements on the island. The hoardings, along with others nearby were identified as being harmful when the UCA appraisal was carried out in 2014 and I agree with this assessment.

23. Thus, despite the fact that this site (for two hoardings) has been used for some considerable time and that income would be lost, these commercial matters and arrangements do not outweigh my concerns about the substantial injury that they cause 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

24. 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 grounds of appeal; the main appeal statements; the copies of the letters to the Planning Inspectorate Case Officer and the appellant's final comments dated 17 September 2016

25. However, none of these carries sufficient weight to alter my conclusion on the main point at issue and that the advertisement site (comprising the two hoardings) 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