
Appeal Decision

Site visit made on 25 April 2017

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 03 May 2017

Appeal Ref: APP/W2465/G/3159528

126 Evington Road, Leicester LE2 1HH

- 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 Mr Mohamed Suleman (the worldofdigital.com Ltd) against discontinuance action by Leicester City Council.
 - The Council reference is legal/CS/102320. The Discontinuance Notice is dated 4 August 2016.
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Decision

1. The appeal is dismissed. The Discontinuance Notice shall come back into effect immediately and the use of the site for the display of advertisements with deemed consent cease by the end of eight weeks from the date of this decision.

Main Issue

2. Whether the continued use of the site for the display of advertisements with deemed consent would cause a substantial injury to visual amenity or a danger to public safety.

Reasons

3. The site lies within the Evington Road local shopping centre. This is a very active business area of small and medium sized shops, generally situated at ground floor level within two or sometimes three storey mainly late 19th or early 20th century frontages. The shopping centre takes the form of a traditional vibrant high street, surrounded by a large area of dense terraced housing. Display windows vary from small panes typical of older shopfronts to large, full width windows. At the site visit I noticed a great variety of static displays but no other moving, illuminated displays.
4. The site occupies a very prominent position visually and the display comprises almost the full window height and width. It lies at the brow of the rise going westwards along Evington Road and is open to view over a wide arc because of its corner position at the junction with East Park Road. I consider an illuminated, moving display of the size and type installed, in such a prominent position, to be significantly out of character with small scale, traditional nature of its surroundings and to give rise to substantial injury to amenity.

5. Turning to the effect on highway safety, both main roads are heavily trafficked, being routes into and out of the city centre. A display such as this could well be a significant distraction approaching the junction particularly, but not exclusively, when driving from the east along Evington Road and when waiting to turn right into East Park Road, where the display directly faces the waiting vehicle from a short distance away.
6. A bright, changing background would be presented within a large part of the driver's field of view where attention should be focussed on traffic lights and on other vehicles performing junction manoeuvres. This could well give rise to confusion in the reading of traffic lights caused by changes in the colour or form of imagery displayed, a situation all the more hazardous because of the presence of pedestrian crossings at each set of lights.
7. Likewise, pedestrians attempting to cross against the background of such a display could misread signals. In mist, rain, or overcast conditions and at night, the effects would be more pronounced. Associated with the junction is a history of personal injury accidents and, although none have occurred since the installation of the advertisement, displays such as this can only increase the risk.
8. Planning Practice Guidance cautions against distraction by advertisements at points where drivers need to take more care, including junctions and pedestrian crossings.¹ It also points to the main types of advertisement which may cause danger to road users, including those which might reduce the effectiveness of traffic signals, distract road users because of their unusual nature, and those which incorporate moving elements in their display.² In this case, a significant danger to members of the public is posed.
9. The appellant points to examples of illuminated moving displays elsewhere. Each case must be treated on its own merits and without knowledge of particular circumstances it is difficult to comment. However, in none of those cases illustrated do the signs appear to face oncoming traffic at eye level in association with traffic signals.
10. Being an advertisement displayed inside a building, the display might fall under Class I of Schedule 1 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) and therefore require no consent. However, it requires consent because it is illuminated and instead falls within Class 12 of Schedule 3 of the Regulations which attracts deemed consent. Under deemed consent, an application is not required for express consent. However, Regulation 8 states that a local planning authority may, if it is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of a locality or a danger to members of the public, serve a notice requiring the discontinuance of a display or site for which there is deemed consent.
11. The appellant feels aggrieved because advice from the Council indicated that deemed consent applies and therefore an application for consent was not required. This is the correct legal position. However, Regulation 8 allows the Council to serve a discontinuance notice after installation of the display where it perceives cases of substantial injury to amenity or a danger to the public.

¹ Reference ID: 18b-067-20140306

² Reference ID: 18b-068-20140306

12. I note the appellant's dispute with the Council over the alleged behaviour of an officer. However, this must be settled through other processes and has no bearing on my decision. I also note that the appellant has experienced medical problems recently and offer my sympathy. Further, that the appellant's business, together with the employment of staff, may have suffered because of the notice. In addition, a department of the Council has made use of the display for public information purposes.
13. However, I must decide the appeal solely on the basis of the effect of the advertisement on amenity and public safety. I find the continued display of the advertisement would cause substantial injury to visual amenity and a danger to the public.

Alan Novitzky

Inspector