
Appeal Decision

Site visit made on 6 March 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 04 May 2017

Appeal Ref: APP/U5930/C/16/3155460

Land at 534 High Road Leytonstone, London, E11 3EE

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Primesight Ltd against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The notice was issued on 27 June 2016.
 - The breach of planning control as alleged in the notice is: The unauthorised erection of a platform and railings to the side flank wall of the Property to facilitate access to an existing advertisement hoarding, as shown on the enforcement notice plan hatched in blue.
 - The requirements of the notice are:
 - 1) Remove the unauthorised platform and railings constructed under the advertisement hoarding to the side flank wall of the property.
 - 2) Repair any damage caused to the side elevation wall as a result of Step 1.
 - 3) Remove all fittings, materials, debris and general detritus from the Property, resulting from the works required in Steps 1 and 2.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the ground set out in s174(c) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (c)

2. An appeal on ground (c) is that the matter alleged does not amount to a breach of planning control. Ground (c) is one of the "legal grounds". In a legal ground of appeal the burden of proof is upon the appellant.
3. It has not been disputed that the works to erect the platform and railings amounted to an act of development¹ that was not permitted development. The appellant's case is that the site i.e. the north facing flank wall of number 534, has been used continually for a period of at least ten years for the display of advertisements without express consent and that there are deemed consent rights under Class 13 of the Town and Country Planning (Control of Advertisements)(England) Regulations 2007 (as amended) [hereafter "the Regulations"]² for the display of advertisements. The appellant argues that the platform and railings are part of the advertisement(s) displayed at the site.

¹ S55 of the Act states that "development" means (amongst other things) the carrying out of building operations.

² Class 13 of the Regulations concerns advertisements on sites used for the preceding ten years for the display of advertisements without express consent. An advertisement displayed on such a site, and thus falling within this Class, will enjoy deemed consent subject to limitations and conditions.

4. S222 of the Act provides that, where the display of an advertisement is in accordance with the Regulations and also involves development, planning permission for that development shall be deemed to be granted. Thus, if the platform and railings are part of the display of an advertisement, and that advertisement display is in accordance with Class 13 and the standard conditions³, deemed planning permission is granted and there is no breach of planning control.
5. If, on the other hand, the platform and railings are not part of the display of the advertisement; or (even if they are) are displayed in contravention of the Regulations there is no legal restriction on the issuing an enforcement notice if, in all other respects, it appears to the Council that there has been a breach of planning control.
6. These are the matters on which I shall focus as it is in these matters that the main areas of contention between the parties lie.

Whether the platform and railings are part of the display of an advertisement

7. The definition of "advertisement" in s336(1) of the Act includes "...any hoarding or similar structure used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use, for the display of advertisements...." The appellant's case is that the platform with railings falls within the definition because it is "anything else" principally used for the display of advertisements.
8. I do not accept this argument. The platform, which is positioned beneath the hoarding, is (I am told) used by the operators of the hoarding to change the posters and to carry out maintenance. To my mind, when taking into account the wording of the definition, there is a distinction to be drawn between the appeal structure used for such purposes and a structure or anything else to which an advertisement is actually attached, affixed or which provides some form of physical support for an advertisement for the duration of its display. The platform is not part of the structure or support of the advertisement display. Its principal use is for operational purposes and maintenance rather than for the display of an advertisement as such. I conclude, therefore, that it does not fall within the statutory definition of "advertisement" as a matter of fact and degree.

Whether displayed in accordance with the Regulations

9. Notwithstanding my conclusion above, in the eventuality that the platform and railings are part of the advertisement display at the site I shall also consider whether there would be compliance with the Regulations.
10. I have no reason to doubt that the site has been used for advertising for at least the last ten years. Under Class 13 an advertisement may be displayed on such a site subject to conditions and limitations. Limitation (1) states that an advertisement does not fall within Class 13 if, during the relevant 10 year period, there has been either a material increase in the extent to which the site has been used for the display of advertisements or a material alteration in the manner in which it has been so used.

³ The Standard Conditions are set out in Schedule 2 of the Regulations and are widely applicable, including to all the classes of advertisements within Schedule 3.

11. Being located in a prominent and elevated position on the flank wall of the property, the structure, with its metal brackets protruding outwards from the wall of the building and the platform which they support spanning much of the width of the elevation, to my mind would have brought about a material increase in the extent to which the site had been used for the display of advertisements and would have represented a material alteration in the manner in which it had been used.
12. Even if the platform and railings were part of the advertisement display, that display would not have been in compliance with Class 13 limitation (1), and thus would not have been in accordance with the Regulations.
13. For the above reasons I find that the matter alleged constitutes a breach of planning control. The appeal on ground (c) fails.

Other matters

14. The Council has suggested that advertisements displayed on the site do not comply with the limitations and conditions of Class 5. Even if that is the case the appellant is not precluded from arguing that the advertisement site enjoys deemed consent under Class 13. This matter has had no bearing upon the findings leading to my decision.
15. The Council has argued that the platform and railings impair the visual amenity of the site and, as such, there is a failure to comply with standard condition 2. The word "maintained" in standard condition 2 indicates that this condition concerns issues of disrepair and dilapidation rather than more aesthetic considerations around (for example) effects upon the character and appearance of the street and the architectural value of the building. The general maintenance of the site does not give rise to concern that there is any breach of standard condition 2.
16. Even if standard condition 2 has a wider meaning which encompasses planning merits, this is not a matter on which I need to take a view as I have already concluded, on other issues, that the appeal will fail.

Conclusion

17. For the reasons given above I conclude that the appeal should not succeed.

Susan Wraith

Inspector