
Appeal Decision

Site visits made on 15 and 16 August 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 29 August 2017

Appeal A: Appeal Ref: APP/H5390/G/16/3159098 359 Fulham Palace Road, London, SW6 6TB

- 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 Poster Investments (A) Ltd against discontinuance action by the Council of the London Borough of Hammersmith & Fulham.
 - The Council reference is 2016/00149/ADVERT. The Discontinuance Notice is dated 26 August 2016.
 - The site is the flank wall of 359 Fulham Palace Road fronting Edgarley Terrace at first and second floor levels.
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Appeal B: Appeal Ref: APP/H5390/G/16/3159009 359 Fulham Palace Road, London, SW6 6TB

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Insite Poster Properties against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/03059/ADV dated 5 July 2016 was refused by notice dated 30 August 2016.
 - The advertisement proposed is the replacement of existing 48-sheet advertising display with a 36 sheet backlit advertising display.
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Decisions

Appeal A: Appeal Ref: APP/H5390/G/16/3159098

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 shall cease by the end of four weeks from the date of this decision.

Appeal B: Appeal Ref: APP/H5390/G/16/3159009

2. The appeal is dismissed.

Preliminary Matters

3. It was not clear from the papers whether the current advertisement was illuminated or not but the proposed advertisement in Appeal B would be illuminated and therefore I made a day-time and a night-time visit. At the time of my night visit the current advertisement was not illuminated.

4. A grant of express consent for an internally illuminated portrait display some 4.5 sq m smaller than the current advertisement was allowed on appeal in 2011¹. It was not implemented and an application to renew the consent was refused by the Council in 2016 and is the subject of Appeal B.

The Main Issues

5. The two separate appeals have to be determined on the basis of two separate and different main issues. With regard to Appeal A it is whether the continued use of the site for the display of advertisements with deemed consent would be substantially injurious to amenity and in Appeal B it is the effect of the proposed advertisement on amenity in terms of the appearance of the buildings, the street scene and the setting of the nearby Bishop's Park Conservation Area.
6. Therefore the Appeals are inextricably linked and I will determine them accordingly.

The Regulations and Policy

7. The test in Appeal A 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'. I have to determine Appeal A on the basis of this test and it is a stricter test than that in Appeal B where, pursuant to Regulation 3, 'the interests of amenity and public safety' have to be taken into account when considering whether express consent should be granted for an advertisement. There is no danger to members of the public and both Appeals A and B turn on the effect on amenity only.
8. 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 Policy DM G8 of the Council's Development Management Local Plan is a material consideration it cannot be decisive in itself.
9. The National Planning Policy Framework (the Framework) is relevant and reiterates that amenity and public safety should be the only considerations relating to the control of advertisements. However, I have had regard to the presumption of sustainable development and paragraphs 17 and 19 which 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.
10. The Planning Practice Guidance (PPG) also refers to the test of 'substantial injury' being caused to amenity. The PPG advises that a local planning authority needs to precisely define the site and justify its reasons for issuing a discontinuance notice. I have also had regard to the relevant matters in both the Framework and the PPG.

The site and surroundings

11. The appeal site is the southern flank wall of 359 Fulham Palace Road at first and second floor levels. The property is on the corner with Edgarley Terrace which is a residential street. At the time of my visit No 359 had a café on the

¹ APP/H5390/H/10/2136640

ground floor with what appeared to be residential uses on the upper floors. The site is within a designated Neighbourhood Shopping Parade and is adjacent to Bishop's Park Conservation Area.

12. The appeal site currently hosts an advertisement which benefits from deemed consent under Class 13 of Part 1 of Schedule 3 to the Regulations having operated for a period in excess of ten years. It is said to be an externally illuminated panel hoarding some 6m x 3m.

Reasoning

13. The PPG advises that 'amenity is usually understood to mean the effect on visual and aural amenity in the immediate neighbourhood of an advertisement or site for the display of advertisements, where residents or passers-by will be aware of the advertisement'².
14. The appeal site can be seen some distance way and in approaching the appeal site from Fulham High Street the three storey terrace of residential properties along Fulham Palace Road form a continuous pattern which is disrupted by the overpowering nature of the current advertisement. The small scale commercial character of the shopping parade is viewed separately and is distinct from the advertisement. This is particularly apparent at night when commercial illumination is restricted to the ground floors of the buildings whereas the flank wall provides a location for an advertisement that is well above ground level.
15. The appeal site is opposite the Bishop's Park Conservation Area. The flank wall is visible from within the Conservation Area and the advertisement is a conspicuous and discordant feature on the flank wall.
16. Regulation 8 (8) requires a LPA, in considering whether to serve a discontinuance notice, to have regard to any material change in circumstance that has occurred (that is, since the advert was first displayed – whether with deemed or express consent). In this regard I note that the flank wall of No 359 is the only flank wall in the parade that has an advertisement on it³ which is apparently the result of action taken by the Council as part of its Street Scene improvements. This was not the case when express consent was granted in 2011 and I consider it to be a material change in circumstances.
17. I appreciate that the current advertisement has been in place for some time and that by its very nature an advertisement is intended to be seen but the continued use of the flank wall for any advertisements would spoil the character and appearance of the host building and the surrounding area by being a discordant and visibly intrusive element in the Victorian terrace and its incongruity within a predominantly residential environment where commercial uses are restricted to the ground floors of buildings. This would be particularly the case with an illuminated advertisement at night.
18. I therefore find that the continued use of the flank wall at No 359 for the display of advertisements with deemed consent would be substantially injurious to amenity.
19. With regard to Appeal B I am aware of the previously approved grant of express consent and I note that at that time five of the six flank walls in the

² Paragraph: 079 Reference ID: 18b-079-20140306

³ Save for what appeared to be a recently installed advertisement for the Estate Agents on the opposite corner

parade had panel posters at upper level⁴ but, as mentioned above, this is no longer the case. The surrounding area has changed and for the reasons given above including the incongruity of an advertisement in this location I find that the proposed advertisement would have a harmful effect on amenity in terms of the appearance of the buildings, the street scene and the setting of the nearby Bishop's Park Conservation Area.

Other Matters

20. I have taken into account all matters raised including the representations by the Fulham Society in respect of Appeal A.

Conclusions

Appeal A

21. For reasons given above I conclude that the continued use of the site for the display of advertisements with deemed consent would be substantially detrimental to the interests of amenity.

Appeal B

22. For the reasons given above I conclude that the display of the advertisement would be detrimental to the interests of amenity.

Gloria McFarlane

Inspector

⁴ Paragraph 3 of APP/H5390/H/10/2136640