



Appeal Decision

Inquiry Held on 19 March 2019 and 3 October 2019

Site visit made on 2 October 2019

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 25th October 2019

Appeal Ref: APP/X5210/H/18/3194410

Delancey Street, London NW1 7PS

- 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 Goldschmidt and Howland against the decision of the Council of the London Borough of Camden.
 - The application Ref 2017/5628/A, dated 10 October 2017, was refused by notice dated 8 December 2017.
 - The advertisement proposed is described as a proposal to retain the current non-illuminated advertisement on the site. It is made without prejudice to the Applicant's contention that the advertisement has deemed consent under Class 13 Schedule 3 Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The advertisement takes the form of a mural located along the rear wall of the car park. It is not a hoarding nor a fascia sign.
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Decision

1. The appeal is allowed and deemed consent is granted for the retention of a non-illuminated advertisement made of a composite panel with a vinyl face in the form of a mural in various colours located on the rear wall of the car park (the advertisement is neither a hoarding nor a fascia sign) at Delancey Street, London NW1 7PS as applied for. The consent is subject to the standard conditions set out in the Regulations.

Procedural Matters

2. There is some discrepancy in the description of the advert between the application form, the appeal form and the Council's Decision Notice. Whilst I have no evidence of any dispute between the main parties regarding the description of the advertisement, I have used part of the description contained in the appeal form in the determination of this appeal.
3. The advertisement is displayed on the appeal site. The application sought express consent for the retention of an advertisement displayed on the boundary wall to the car park near the junction of Delancey Street with Parkway. The application form and the planning officers report identified that the appellant believed the advertisement to have deemed consent as there have been advertisements displayed on the wall continuously for over ten years. The submitted Statement of Common Ground (SoCG), supported by relevant case law, identifies that both main parties agree that I have jurisdiction to determine in this appeal whether or not the site benefits from

deemed consent and as such whether express consent is necessary¹. I have no reason to take a contrary view from the main parties in this matter.

4. I have therefore determined this appeal on a sequential basis by firstly considering whether deemed consent exists. If so, consideration of whether express consent should be granted is not necessary. If deemed consent does not exist, then consideration is required to whether express consent should be granted.

Main Issues

5. Taking into account the approach above, the evidence before me and from what I heard at the Inquiry, the main issues are therefore:
 - Whether the advertisement benefits from deemed consent.
 - If the advertisement does not benefit from deemed consent, in the consideration of express consent the effect of the advertisement on amenity with particular regard to the character and appearance of the surrounding area and the setting of designated heritage assets.

Reasons

Background

6. The appeal site is located close to the junction of Delancey Street with Parkway and comprises an existing car park located next to and over an operational railway line. The single storey brick boundary wall on which the advertisement is sited separates the car park from the railway.
7. The boundary of the Camden Town Conservation Area runs close to the northern edge of the site such that it lies outside of but adjacent to the conservation area. The area to the east and south of the site is predominantly residential and contains a number of Grade II Listed Buildings. The area to the north of the site is a mixture of commercial and residential buildings.
8. On 15 October 1998 express consent was granted (Ref AE9800649)² to Parkways Estate Agents for 'the display of painted advertisements on the single storey brick boundary wall' ('Parkways'). The application form identified that the proposed advertisements would take the form of logos to replace previous painted logos of a different company. Photographs³ indicate that the advertisement involved the brickwork of the wall being painted white on which the logos were painted. The advertisement substantially covered the whole wall.
9. I do not consider that the wording of the consent granted in 1998 can reasonably be interpreted to place any restriction on the size or extent of coverage of the wall by advertisements. That consent was for the display of advertisement on the site, limited to the wall, but makes no reference to size or extent of coverage.
10. The Parkways Consent was limited to a five-year term until 15 October 2003. There was no condition which required the display of the advertisement to be

¹ CD 5 – SoCG and CD 25 – Thomas v National Assembly for Wales [2009] EWHC 1734 (Admin) at 38

² CD 7 – Appendix 2 to Proof of Evidence of Ian Trehearne

³ Page 15 Mr Trehearne's Proof of Evidence

removed after that date. The affidavit of Mr Michael Parry⁴ demonstrates that in May 2005 the site was included in an auction and the catalogue photographs at that time clearly show the 'Parkways' advertisement in place.

11. In 2011 the advertisement space comprising the wall was let to Oliver's Town Residential Limited ('Oliver's'). The 'Parkways' advertisement was replaced by a series of murals painted on the wall which similarly substantially covered the whole wall.
12. The Appellant took possession of the wall on 1 January 2017. The advertisement which is the subject of this appeal replaced the 'Oliver's' advertisement and was placed on the wall in January 2017. It comprises predominantly of a mural of buildings set against a skyline with a number of indicated estate agent boards on some of the buildings. The Appellant indicates that the advertisement is a 3mm matt laminated printed vinyl adhered to a 12mm ply which is affixed to the wall.
13. The SoCG confirms that there have been advertisements on the wall of the site continually since at least 1998. In addition, it confirms that the display of advertisements on the rear wall of the site does not cause any public safety issues.

Deemed consent

14. Regulation 6 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) grants deemed consent for the display of an advertisement of any class specified in Part 1 of Schedule 3. Class 13 of Schedule 3 reads "An advertisement displayed on a site that has been used continually for the preceding ten years for the display of advertisements without express consent."
15. Class 13 is subject to a number of conditions and limitations of which (1) is relevant to the consideration of this appeal. This states that "(1) An advertisement does not fall within this description 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."
16. There is no dispute between the main parties that the site has been used continually for the display of an advert for at least ten years. However, the Council considers that the 'Parkways' display is materially different to the 'Oliver's' display due to the fact that the 'Parkways' advertisement displayed a number of painted logos on the wall which were smaller than the 'Oliver's' advertisement. In addition, the Council considers that the appeal advertisement is different to the 'Oliver's' advertisement due to it comprising of digital images set on vinyl sheeting display boards and the fact that the display signs incorporated into the mural are larger than those in the 'Oliver's' advertisement.
17. The Council also suggests that there were notable sections of the wall that previously did not display any form of advertisement and are now covered by the current advertisement. In addition, the Council considers that the current vinyl advertisement printed on separate structures attached to the wall is materially more substantial in scope and visual impact than the former painted

⁴ CD 10 – Affidavit of Michael Parry

signs and mural and therefore considers this to constitute a material alteration in materials, extent of the site that has been used for displays and the manner in which the site has been used.

18. Class 13 of the Regulations places no restriction on the content or nature of an advertisement that can be displayed in the relevant 10-year period and whether this takes the form of logos or mural. Both main parties accept that the question of whether there has been a material increase in the extent to which the site has been used for the display of advertisements or a material alteration in which it has been used is a matter of fact and degree. In this regard, the Appellants referred to various case law and in particular the case of *Arthur Maiden Ltd v Lanark CC (No 2) [1958] JPL 422⁵* in which an advertisement painted directly onto a wall was replaced with a billboard. This was not held to be a substantial alteration and so did not negate the deemed consent. Whilst each case has to be considered on its own individual merits, I accept that there is some degree of analogy with the principle issues for consideration in this appeal case.
19. Although the 'Parkways' logos themselves did not occupy the whole wall they were set on a white background which was painted across the whole wall. In my view, this white background painted on the wall forms part and parcel of the structure of the advertisement by 'framing' the logos. Therefore, I consider that the question of what constitutes the 'Parkways' advertisement can reasonably be described as the whole of the wall.
20. Furthermore, the Appellant referred to Section 336 of the Town and Country Planning Act 1990 which identifies that the structure on which the advertisement sits and "*anything else principally used...for the display of advertisements*" forms part of the advertisement. The extent of the wall remains unchanged in all three advertisement and this reinforces my view in this case that the whole wall forms part of the advertisement.
21. The 'Oliver's' advertisement involved the painting of a mural and signage on the wall including parts that were not previously occupied by the 'Parkways' logos. A skyline over the mural was formed by the white painted wall. In part the Oliver's advertisement included unbroken graphics.
22. In an email dated 8 August 2017⁶ the Council identified that the 'Oliver's' advertisement benefitted from deemed consent. Therefore, I accept the Appellant's contention that view taken by the Council at the time, based on reasonable interpretation of the evidence provided in the email, was that there was no material increase in the extent to which the site was used for the display of advertisements or a material alteration in the manner which it had been so used between the 'Parkways' and the 'Oliver's' advertisement.
23. The appeal advertisement occupies the whole length of the wall, predominantly in the form of an unbroken graphic. Although the skyline above the mural is now pale blue in colour, there is no material difference in the extent of the wall occupied for the purposes of an advertisement between the 'Oliver's' and the appeal advertisement.
24. Taking into account my findings above, on fair viewing of the site, the full extent of the wall was, and continues to be, covered by an advertisement with

⁵ CD 21

⁶ CD 7 – Appendix 4 to Mr Proof of Evidence of Ian Trehearne

- no material change in the extent of the wall occupied for advertisement purposes between the 'Parkways', 'Oliver's' and the appeal advertisement. Consequently, there is no material increase in the extent to which the site has been used for the display of advertisements since at least 1998.
25. Turning now to consider whether there has been a material alteration in the manner in which the site has been used, the Council contend that the appeal display amounts to a material alteration in the manner of use of the site due to the colours, design and unbroken graphics. However, I do not share this view when considered against the limitations provided in Class 13 (1). Whilst there are differences in the appearance of the displays between the 'Parkways', 'Oliver's' and appeal advertisement, the whole wall was, and continues to be, used as an advertisement. The Council appears to have accepted this approach in the email of 8 August 2017 in identifying that the 'Oliver's' display benefitted from deemed consent. The change from painted mural to vinyl advertisement does not involve a material alteration in the use of the site. It was, and continues to be, used for the purposes of an advertisement. Taking these factors into account I do not find that there is any alteration in the manner in which the site is used.
26. The difference in materials used to create the advertisement between the current smooth vinyl finish and former painted brickwork would not be readily discernible in public views of the wall. Furthermore, I do not share the Council's view that the vinyl advertisement has a sheen which is materially different to painted brick. In public views the existing vinyl advertisement has a matt finish and, in my view, the only discernible difference is on close inspection where the brickwork and mortar shape would be seen beneath the paint.
27. Taking the above factors into account, there is no basis to suggest that the changes in the content of the current appeal advertisement or materials used, from that contained in the previous two, results in a material increase in the extent to which the site has been used for the display of advertisements or a material alteration in which it has been used as required to be considered within the relevant limitations of Class 13 (1).
28. I recognise the Council's concerns regarding the change to the content of the advertisement between the three. However, the relevant considerations of the limitations in Class 13 (1) are clear. Whilst the content of the advertisements may have changed, the appeal advertisement is not materially of greater extent than the previous advertisements nor does it alter the manner in which the site is used.
29. Against this background, and within the context of the Class 13 (1) limitations, in being no greater in extent or causing any alteration in the use of the site, the appeal advertisement has no material greater impact on amenity or the significance of any heritage assets than those previously. As such, the change from the 'Parkways' to the appeal advertisement does not amount to a material alteration within the context of the Class 13 (1) limitations. I therefore conclude that the advertisement benefits from deemed consent.

Express consent

30. I have found that the advertisement benefits from deemed consent. As such, taking into account my approach to the consideration of this appeal set out

earlier in this decision, both main parties agree that this finding would negate the need to consider whether or not express consent should be granted and, in particular, the need to consider the second main issue identified in this appeal. No further consideration of the matters relating to the application for express consent is therefore necessary and there is no need for me to make any further comment on this matter.

Other matters

31. I have some sympathy with the concerns of local residents regarding the content and appearance of the advertisement. However, I am required to consider this matter of deemed consent on the basis of the evidence provided against limitations set out in Class 13 (1) of the Regulations. In this case, I have taken into account the concerns raised but within the context of such limitations I have found that there has been no material increase in the extent to which the site has been used for the display of advertisements or a material alteration in which it has been used in the relevant 10-year period.

Conditions

32. In addition to the standard conditions as set out in the Regulations the Council has suggested two additional conditions should I consider that express consent should be granted. However, as I have found that the advertisement benefits from deemed consent the two suggested additional conditions are not applicable or necessary. Consequently, as required by Part 2, Regulation 6 (1) (a), the deemed consent granted is subject to the standard conditions as set out in Schedule 2 of the Regulations.

Conclusion

33. Consequently, for the above reasons, and taking into account all other matters raised, I conclude that the appeal should be allowed and deemed consent be granted.

Stephen Normington

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Laura Phillips	of Counsel instructed by London Borough of Camden Council
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She called

Angela Ryan BA (Hons)	Planning Officer, London Borough of Camden Council
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Colette Hatton BA, DipHBC	Conservation Officer, London Borough of Camden Council
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FOR THE APPELLANT

Mark Westmoreland Smith	of Counsel instructed by Goldschmidt and Howland Limited
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He called

Ian Trehearne MRTPI	Chartered Town Planner
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INTERESTED PARTIES

David Graham	Delancey Street Residents Association
Anthony Richardson	Local Resident
Guy Lane	Local Resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Google Map views of appeal site provided by the Council.
- 2 Appendix 7 of Angela Ryan's Proof of Evidence
- 3 Letter dated 29 March 2017 from Council to Appellant titled 'Letter of Alleged Offence'.
- 4 Petition requesting dismissal of the appeal containing 67 signatures presented on behalf of Delancey Street Residents Association.
- 5 Opening Submissions on behalf of the Appellant.
- 6 Opening Submissions on behalf of the Council.
- 7 Transcript of Statement read by Mr Graham.
- 8 Suggested conditions provided by the Council in the event that express consent is granted.
- 9 Closing Submissions on behalf of the Council.
- 10 Closing Submissions on behalf of the Appellant.