
Appeal Decision

Site visit made on 13 October 2020

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal Ref: APP/A1530/G/20/3250120

Land adjacent to 8 Mersea Road, Colchester

- 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 Oberon Public against discontinuance action by Colchester Borough Council.
 - The Council reference is 097130. The Discontinuance Notice is dated 14 February 2020.
-

Decision

1. The appeal is dismissed. The Discontinuance Notice shall come back into effect immediately and that the use of the site for the display of advertisements with deemed consent cease by the end of 8 weeks from the date of this decision.

Preliminary Matters

2. Although the Council have issued a discontinuance notice, during their investigation their approach to the appellant was that the current display did not enjoy deemed consent under Class 13 of the Town and Country Planning (Control of Advertisements) Regulations 2007 (the Regulations). This is because it comprises 2 x 48 sheet panels newly erected in 2019 whereas historically, as demonstrated by the appellant, there were 3 x 48 sheet panels at the site.
3. The appellant submits that a decrease in the size of the display does not negate the benefit of the deemed consent and I concur with this view. It has also been held by the Courts that a break in the period of the use of the site for displaying advertisements, such as removing three hoardings and subsequently replacing them with two hoardings, does not negate the deemed consent.

Main Issue

4. The main issue is whether the continued use of the site for the display of advertisements would cause substantial injury to the amenity of the locality.

Reasons

5. The appeal site comprises open space laid to grass bounded on one side by a brick wall adjacent to No 8 Mersea Road, an end of terrace house. The site overlooks St Botolph's Circus, a large roundabout junction on the busy A134 road. At the time of my site visit, there were 2 x 48 sheet, non illuminated panels displayed side by side, positioned about 1.3m above ground level.

6. The hoardings sit on the edge of a residential area which lies to the south and south east of the roundabout. Directly to the west of the site, separated only by the width of Mersea Road is the historic St John's Abbey boundary wall, which is designated as a scheduled monument. It is a substantial structure due to its height, depth and significant length extending a considerable distance along Mersea Road and it marks one of the boundaries of the Garrison Conservation Area. To the north of the roundabout lies the historic town centre of Colchester, which is a separate conservation area. Colchester Town railway station and the Magistrates Court are also on the north side of the roundabout.
7. The appellant emphasises that the appeal site lies outside the boundary of any conservation area to support his argument that the appeal site is not subject to any 'special regulations'. However, the Abbey boundary wall is an asset of the highest significance. The National Planning Policy Framework states that when considering the impact of a proposed development, (which in this case is the continued use of the site to display advertisements) on the significance of a designated heritage asset, great weight should be given to the asset's conservation. (paragraph 193)
8. The display is visible to drivers approaching from the east along the A134 as they enter the roundabout and take the exit along Mersea Road. It is also visible to pedestrians at this point, especially as they approach the bus stop at the roundabout. From this angle, the display is seen against a residential backdrop of two storey housing. The height and width of the display obscures the flank wall and two storey outrigger extension at No 8 Mersea Road except for the roof area. As such, I find that the scale of the display dominates the domestic scale of the dwelling and causes harm.
9. It is also considered from the east that the view of the display is seen at the same time as the Abbey wall. The appellant disputes this and states Mersea Road is perpendicular to the display but, on the ground, I find that the open space in front of the display forms part of the setting of the scheduled monument. The setting of the scheduled monument is quite extensive given the size of the structure, but in the surroundings of the appeal site in which the scheduled monument is experienced, this includes the appeal site, nearby dwellings and the roads and pavements that make up St Botolph's Circus.
10. The significance of this part of the setting of the Abbey wall is that this is the only place where it is possible to view a large expanse of the wall straight on in a wide-angle situation and appreciate its historic significance. Other views in the area are either parallel to it, oblique or more closed and provide a different experience of the asset. In this context the use of the appeal site for the display of advertisements makes a negative contribution to the historical significance of the asset. I find the display at this point is visually intrusive and diminishes the significance of the asset.
11. Approaching the site from the west along the A134 road, the display is again seen against the residential backdrop. From the commercial area to the north of the roundabout, such as from the railway station, it is difficult to discern the site due to the landscaping within St Botolph's Circus, which interrupts the view. Pedestrians making use of the open seating area within the middle of the circus are unable to see the display due to their position below the level of the road.

12. The appellant submits that the display faces away from the residential buildings and targets traffic leaving the roundabout in a busy commercial locality. However, whilst the A134 road carries much traffic, it also divides the town centre to the north from the residential area to the south. So, although the display faces away from the houses, there is no avoiding that it is viewed against a residential backdrop. Due to its position on the south side of St Botolph's Circus it is also unrelated to the town centre, where large scale advertising is often more acceptable.
13. The appellant also refers to other displays in the area such as a 48 sheet panel displayed at first floor level and a sign advertising potatoes, which are near to the site. The Council made no comment on these displays but it seems to me that whilst there are some similarities between these displays and the appeal site, namely being south of the A134 road, they are not of the same scale and they are also not viewed at the same time as the Abbey wall. I therefore give this submission limited weight.
14. The Council refer to a number of development plan policies in their reasons for taking discontinuance action. I have had regard to the policies as material considerations, however, the powers under the Regulations to control advertisements through the discontinuance of deemed consent may be exercised only to remedy substantial injury to the amenity of locality and in the interests of public safety. In my determination of this appeal, the Council's policies have not by themselves been decisive.
15. For all these reasons I am satisfied that in this case the advertisement display reaches the stricter threshold of causing substantial injury to the amenity of the locality necessary to justify the issue of a discontinuance notice. In reaching that conclusion, I recognise that the site has been used for the display of advertisements since at least April 2009. However, that does not make the continued use of the site for the display of advertisements acceptable. It only means that the substantial injury to the amenity of the locality has been ongoing for all of that time until now, without the intervention by the Council.

Conclusion

16. For the reasons given above, including the evidence of the adverse effects of the existing advertising on the site, 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.

D Fleming

INSPECTOR