The Planning Inspectorate

Appeal Decision

Site visit made on 11 May 2022

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022

Appeal Ref: APP/A1530/G/21/3274955
Land adjacent to Waldegraves Lane (at junction with Chapmans Lane and East Road), West Mersea, Colchester CO5 8SE

- 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 an advertisement with deemed consent.
- The appeal is made by Mr David Lord against discontinuance action by Colchester Borough Council.
- The Council reference is 004753.
- The Discontinuance Notice is dated 15 April 2001.

Decision

1. The appeal is dismissed. I direct that the discontinuance notice shall come back into effect and that the use of the site for the display of the advertisement with deemed consent shall cease on or before 3 months from the date of this decision.

Application for Costs

2. An application for an award of costs was made by the appellant against the Council's decision to issue the discontinuance Notice. This is the subject of a separate decision.

Procedural Matters

3. Prior to the discontinuance notice being issued it is patently obvious that the Council wavered in its assessment as to whether or not the advertisement benefitted from deemed consent. Only those advertisements for which deemed consent applies can be subject to discontinuance action.

4. To illustrate the Council's approach I refer to its Statement of Case where, in paragraph 2.13, it is said that, on 16 November 2020, the Council confirmed that the proposed replacement sign benefitted from deemed consent. However, paragraph 2.14 goes on to say, following a site visit on 27 November 2020, a reassessment was made and it was decided that the sign did not benefit from deemed consent.

5. The appellant, in providing a chronology of related events within the appeal papers, confirms this saying that on 5 March 2021 his agent received an e-mail from the Council's enforcement officer saying that replacement advertisement *"…does not benefit from deemed consent. The reason for this is that it is similar in many respects to the advertisement for which planning permission and the subsequent appeal were refused."*

6. Then, on 19 March 2021, the Council official again e-mailed the agent stating:

   This matter has been given due consideration and the Council's position is that the sign can remain pending the service of a Discontinuance Notice…The reasons for the Council to serve a discontinuance notice are, that the sign is large and located in a prominent position…"

7. The notice was subsequently issued on 15 April 2001. However, by way of the Council's comments above it does not actually appear that the authority came to a definitive judgement as to the sign's status; instead, merely that it wanted the sign to be removed.

8. Notwithstanding the apparent uncertainty my remit does not extend to passing judgement on whether or not the sign benefits from deemed consent. I can only decide whether or not, in the circumstances, that the discontinuance notice was justified and, accordingly therefore, I have to proceed on the basis that the sign does benefit from deemed consent thereby legitimately allowing for the Council to take the action it did.

9. On a different matter I note that the site plan attached to the discontinuance notice, when issued, was incorrect. However, the Council quickly rectified the error and the relevant plan was e-mailed to the appellant. The appellant accepted the replacement and this is acknowledged in paragraph 2.1 of his Written Statement. In the circumstances I am satisfied that no injustice was caused.

Background and Main Issue

10. I understand from the evidence that the existing sign stands as a replacement for a previous sign which had remained in situ for a number of years; the appellant's representations suggest that it was displayed for a period in excess of 10 years. In August 2019 a larger sign was briefly installed as replacement signage but, following the Council contacting the appellant requesting that it be removed, the previous sign was reinstated.

11. Notwithstanding the above express consent was sought for the larger sign, but this was refused and a subsequent appeal proved unsuccessful with the Council's decision being upheld in June 2020. Following the appeal decision the appellant replaced the old sign with that now in situ and the Council decided thereafter to issue the discontinuance notice.

12. The test under Regulation 8 of the 2007 Advertisement Regulations (in relation to discontinuance notices) requires that there must be 'substantial injury' to the amenity of the locality or a danger to members of the public. In this instance the Council has not raised any objection to the sign in terms of public safety and, as such, the main issue is whether the continued use of the site for the display of the advertisement with deemed consent would be substantially injurious to amenity.

Reasons

13. Resultant substantial injury is a stricter test than that for consideration of the effect on public amenity and public safety when considering whether or not express consent should be granted for an advertisement. It is on the basis of this stricter test that I have considered this appeal.

14. The free-standing advertisement is located upon a grassed verge area in a pleasant rural setting, just off the junction of Chapmans Lane and Waldegraves Lane. Within the immediate vicinity are a scattering of dwellings whose modest size and design contribute to the area's character.

15. The sign at issue between two poles is to a total height of some 2m and a full width (which includes the poles) of 1.42m. The sign itself is approximately 1.22m in height, with a void below, being positioned 0.76 from ground level. The sign's lettering says 'Welcome to Waldegraves Family Holiday Park' and below this, in bold letters, 'Waldegraves Business Park'.

16. The appellant indicates that the sign is fundamental to ensuring that visitors to the holiday park enter Waldegraves Lane and is positioned to direct traffic, accordingly. The point is made that the sign is essential as the holiday park is some distance away from the Chapmans Lane/Waldegraves Lane junction and, without it, car borne visitors would bear right towards East Road and miss the turn. This assertion is reflected in the several letters supporting the sign's presence, four of which are from proprietors within the Business Park. Two such letters have been received from operators at the Holiday Park, and another from a local resident. I have given these, and the comments therein, due regard.

17. The Council, in its representations, has drawn my attention to various policies in the Colchester Local Development Framework Core Strategy. However, the powers under Regulations to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any other material factors. Although these policies are a material consideration in my determination of these appeals they cannot, in themselves, be determinative. Instead, as mentioned, the question is whether the continued use of the site would be substantially injurious to amenity.

18. The National Planning Policy Framework (the Framework) is a significant material consideration. It advises, in paragraph 136, that the quality and character of places can suffer when advertsements are poorly sited and designed.

19. I acknowledge that the existing sign is significantly reduced in dimension from that previously refused express consent which, positioned in the same location, was wider and had a total height of approximately 3.6m, yet the existing display is still prominent enough, due to its isolation, to serve as a directional sign. However, importantly, whilst the wording of signage is not necessarily a consideration in itself, the sign misleadingly gives the impression that, beyond that point, the motorist/cyclist/pedestrian would be crossing into both the confines of the Business Park and Holiday Park area.

20. Although I consider that the degree of harm arising from the overall size of the existing display is arguable, particularly given the mitigative planting and foliage behind, the inference that the sign marks an effective boundary at odds with the immediate rural character, is substantially injurious to the amenities of the surrounding area, especially when considering the Parks' distance from this point.

21. Accordingly, this heightens the advertisement's prominence and impact, compounding matters, and must be factored into the balance. The sign is therefore poorly sited and, as such, I feel the Council's action is justified.

22. The appellant has highlighted other local signage which he feels are comparable. However, in assessing respective merits and impacts account has to be taken of the particular circumstances. Accordingly, direct parallels are not easily drawn.

23. I am somewhat less convinced by the sole objector's claims that the sign itself is responsible for 'extensive damage' due to vehicles being driven along his access track as, from my site visit observations, when I drove the full length of Waldegraves Lane to identify the location of the Parks, there was nothing apparent to direct or distract the motorist from proceeding in a straightforward fashion along Waldegraves Lane.

24. I have also had regard to the independent 'Visit Report' provided by the appellant which states that *"further directional signage at the entrance to the park from the main road would be useful and stop some guests going into the village."* However, this only proves my point in that the existing sign gives the misconception that this marks the entrance point. Perhaps alternative measures need to be explored.

25. In reaching my decision I have taken into account all other matters, including the display's history at the location. However none of these carries sufficient weight to alter my conclusion on the main issue that the continued use of the site for advertisement display would result in substantial injury to amenity. There are no other factors of such significance to change my decision that the appeal should be dismissed. Accordingly, the appeal does not succeed, and the Discontinuance Notice is upheld.

Timothy C King

INSPECTOR