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# Appeal Decision

Site visit made on 9 July 2024

**by K Williams MTCP (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30<sup>th</sup> July 2024**

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**Appeal Ref: APP/U5360/H/24/3337778**

**Gable Wall 28 Upper Clapton Road, London, E5 8BQ**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against conditions imposed when granting express consent.
  - The appeal is made by Wildstone Estates Limited against the decision of the Council of the London Borough of Hackney.
  - The application Ref 2023/2480 was approved on 20 December 2023 and express consent was granted for the display of an advertisement subject to conditions.
  - The advertisement permitted is conversion of existing internally illuminated digital advertisement display to new internally illuminated digital advertisement display.
  - The condition in dispute is No 2 which states that: Following five years the advertisement and all fixtures and fittings shall be removed from the site in their entirety.
  - The reasons given for the condition is: To safeguard public safety and amenity.
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## Decision

1. The appeal is allowed and the express consent Ref: 2023/2480 for conversion of existing internally illuminated digital advertisement display to new internally illuminated digital advertisement display at Gable Wall 28 Upper Clapton Road, London E5 8BQ granted on 20 December 2023 by the Council of the London Borough of Hackney is varied by deleting condition 2.

## Preliminary Matters

2. Although I observed there was an existing digital advertisement display in situ on the appeal building, its exact position did not correspond with the existing and proposed plans<sup>1</sup> as it was positioned almost flush with the corner of the building on Prout Road and Upper Clapton Road. For the avoidance of doubt I have therefore based my decision on the plans before me.
3. The Regulations to control advertisements require that decisions are made only in the interests of amenity and public safety, taking account of any material factors. Therefore, while I have taken account of the policies and guidelines that the Council consider to be relevant, these have not been decisive in my assessment.

## Background and Main Issue

4. The Council granted consent in 2023 for a digital advertisement display subject to the disputed condition. This followed a consent in 2022 for a digital advertisement display of similar size granted at appeal<sup>2</sup> (the 2022

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<sup>1</sup> Drawing No: 13589 PA 04

<sup>2</sup> Appeal reference: APP/U5360/Z/20/3261703

appeal/application). The appeal consent was allowed subject to conditions. One of the conditions stated, *"Following five years the advertisement and all fixtures and fittings shall be removed in their entirety."* This is the same condition imposed on this appeal proposal.

5. The condition on this appeal scheme also requires the advertisement to be from the date of the permission. The appellant considers this requirement to be unjustified and unnecessary as it removes the appellant's right to continue to display the advertisement under deemed consent that would otherwise apply after the expiry of the express consent. The appellant wishes to change the condition to read: *"The express advertising consent expires 5 years from the date of this notice."*
6. The Council's officer report evidenced, did not identify significant concerns in relation to amenity or public safety. Accordingly, the main issue is therefore whether the condition is reasonable or necessary having regard to requirements of the Regulations.

## Reasons

7. The appeal site relates to the side elevation of a four-storey building adjacent to Prout Road. The advertisement would face towards a landscaped pavement area located to the north of the Lea Bridge Roundabout. This vibrant busy area comprises a mix of commercial, retail and residential uses. Other larger advertisements and signs on buildings are also readily apparent within the area and seen in the context of the appeal site. Whilst the landscape area in front of the site provides welcome relief from the built up area, the main road and nearby roundabout heavily influences the overall busy mixed use character of the area.
8. As noted above, the appellant considers that there was no reasoned justification for the disputed condition. The Council's statement of case has provided further rationale for attaching it. Firstly it is evident that the acceptance of the condition by the Inspector in the 2022 appeal and the similarities in the type of advertisement proposed that the condition was attached in order to provide a consistent approach. The previous Inspector considered that the condition, suggested by the Council was necessary because the 2022 application stipulated that consent was sought for a total of five years and its imposition would avoid doubt regarding the timescale.
9. However, the national Planning Policy Guidance<sup>3</sup> (PPG) is clear that a condition should not be imposed as a matter of general policy to prevent the operation of Class 14 of the Regulations, which allow for deemed consent for advertisements after the expiry of the period of express consent. The appellant has stated that for this scheme it would place an unfair constraint following attempts to market it for an advertiser and then remove of it after a short period of operation. Although this is not an exceptional circumstance given the Regulations, the Council considered the digital display advertisement to be entirely acceptable in terms of amenity and public safety.
10. Subsequently the Council has also stated that the condition is necessary as there is a reasonable prospect of major development coming forward at an adjacent allocated site<sup>4</sup>, and pre-application enquiries have been undertaken.

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<sup>3</sup> Paragraph: 034 Reference ID: 18b-034-20140306

<sup>4</sup> Allocation: CL1 – Tram Depot, 38-40 Upper Clapton Road E5 8 BQ

This was not discussed within the officer report, and no schemes or timescales have been provided to me, which limits the weight I can attach to this. I also cannot be certain that any changes to the character and appearance or circumstances of the area would be extensive to warrant the appearance of the digital advertisement display harmful to amenity or public safety. This is particularly the case given the similar level of industrial and employment use intended to be provided in the allocation scheme and the overall mixed and busy character of the area.

11. In granting advertisement consent, the Council considered that the proposal was not harmful to amenity or public safety, and that the attached conditions would address such matters. I have no reason to disagree. Although I appreciate that a condition was previously imposed, and there may be redevelopment in the future, there is no substantive evidence what harm would arise if the advertisement were to remain beyond the initial 5 year period. In my view it has not been demonstrated that deemed powers should be removed. In any event, should it become necessary then the Council would be able to take action by pursuing discontinuance action under the Regulations if at any time following the expiry of the express consent, it is found to cause substantial injury to the amenity of the area or danger to the public.
12. Taking into account the advice in the PPG and the powers available to the Council to take discontinuance action if appropriate, I conclude that the disputed condition 2 in its current form is not necessary.

### **Conditions**

13. I have considered the condition suggested by the appellant but by virtue of the Regulations express consent is automatically for 5 years. The appellant's suggested condition is not necessary. For the avoidance of doubt as I am varying the original consent, this period would run from the date of the Council's decision notice.

### **Conclusion**

14. For the reasons given above I conclude that variation to condition No 2 as set out above would not be detrimental to the interests of amenity and public safety.

*K Williams*

INSPECTOR