



Appeal Decision

Hearing held on 16 June 2024

Site visit made on 16 and 17 June 2024

by Grahame Kean BA(Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal A Ref: APP/B4215/G/22/3309427

ECP Car Park, Miller Street, Manchester

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) against a Discontinuance Notice relating to the use of a site for the display of advertisements with deemed consent.
 - The appeal is made by City Outdoor Media Limited against discontinuance action by Manchester City Council.
 - The Council reference is ENF/15282/21 and the Discontinuance Notice is dated 14 September 2022.
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Appeal B Ref: APP/B4215/G/22/3310603

ECP Car Park, Land Bounded by Rochdale Road, Addington Street and Cable Street, Manchester

- 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 City Outdoor Media Limited against discontinuance action by Manchester City Council.
 - The Council reference is ENF/15283/21 and the Discontinuance Notice is dated 14 September 2022.
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Formal decisions

Appeal A

1. The appeal is allowed and the discontinuance notice is quashed.

Appeal B

2. 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 two months from the date of this decision.

Costs Application

3. An application for an award of costs in respect of both appeals was made by the appellant against the Council. This is the subject of a separate decision.

Preliminary matter

4. A case was made by the appellant concerning alleged defects in the notices issued by the Council for both appeals. At the hearing the appellant did not pursue any question of injustice being caused thereby or urge any correction to the notice and was content to pursue other matters in the context of the cost applications. For the record, I am satisfied that despite inelegant drafting of the First Schedules, both notices were clear in that they were issued under Regulation 8(1)(b), ie in respect of *"the use of a particular site for the display of advertisements for which there is deemed consent"*.

Main Issues

5. The main issue in Appeal A is whether the continued use of the site for the display of an advertisement would cause substantial injury to the amenity of the locality. The main issue for Appeal B is whether the continued use of the site for the display of an advertisement would cause substantial injury to the amenity of the locality or present a danger to members of the public.

Preliminary matters common to both appeals

6. Discontinuance action is when a local planning authority serves a discontinuance notice under Regulation 8, requiring that the display of a particular advertisement with deemed consent (or the use of a particular site for displaying advertisements with deemed consent) be discontinued. A local planning authority may take discontinuance action if it is satisfied that such action is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public.
7. The test of "substantial injury" to the amenity of the locality is a more rigorous test than the "interests" of amenity and must be justified accordingly, as advised in Planning Practice Guidance (PPG) at paragraph: 045 Reference ID: 18b-045-20140306.
8. Regulation 8 requires a statement of the reasons for taking discontinuance action. This must explain why the local planning authority considers that substantial injury to the amenity of the locality or a danger to members of the public, as the case may be, has been caused and also why it considers it necessary to serve the notice. The reasons given should be specific to the site and leave the person displaying the advertisement in no doubt about exactly what makes the display unacceptable to the local planning authority. If the notice refers to the use of the site, the statement must explain why the use of the site as a whole for the display of advertisements should cease.
9. PPG at paragraph: 067 Reference ID: 18b-067-20140306 advises that all advertisements are intended to attract attention but proposed advertisements at points where drivers need to take more care are more likely to affect public safety. For example, at junctions, roundabouts, pedestrian crossings, on the approach to a low bridge or level crossing or other places where local conditions present traffic hazards. There are less likely to be road safety problems if the advertisement is on a site within a commercial or industrial locality, if it is a shop fascia sign, name-board, trade or business sign, or a normal poster panel, and if the advertisement is not on the skyline.
10. PPPG at paragraph: 068 Reference ID: 18b-068-20140306 states that the main types of advertisement which may cause danger to road users are: (a) those

which obstruct or impair sight-lines at corners, bends or at a junction, or at any point of access to a highway; (b) those which, because of their size or siting, would obstruct or confuse a road-user's view, or reduce the clarity or effectiveness of a traffic sign or signal, or would be likely to distract road-users because of their unusual nature.

11. PPG at paragraph: 079 Reference ID: 18b-079-20140306 advises that "amenity" in practice usually refers to 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. Consideration is given to characteristics of the neighbourhood such as if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, whether it is in scale and in keeping with these features. The guidance goes on to state by way of example:

This might mean that a large poster-hoarding would be refused where it would dominate a group of listed buildings, but would be permitted in an industrial or commercial area of a major city (where there are large buildings and main highways) where the advertisement would not adversely affect the visual amenity of the neighbourhood of the site.

12. The Council cites policies it considers relevant, ie Policies EN1, DM1 and SP1 of Manchester's Local Development Framework Core Strategy (CS), adopted July 2012, and Saved Policies DC15.1, DC15.2 and E3.3 of the Unitary Development Plan for the City of Manchester (UDP), adopted July 1995.
13. Neither appeal site lies within a conservation area, however both are in general proximity to the Shudehill and Smithfield conservation areas. I have taken account the desirability of preserving or enhancing the character or appearance of the conservation areas in my decisions.

Policy background

14. Policies DM1 and SP1, are concerned with whether the proposal will have a detrimental impact upon residential and visual amenity or highway safety. Development should consider appropriate siting, layout, scale, form, massing, materials and detail and the effects on amenity and the character of the surrounding area, and (Policy SP1) positively contribute to neighbourhoods of choice including creating well designed places that enhance or create character and protect and enhance the built and natural environment.
15. Saved UDP policy DC 15.1 (advertisements, hoardings and posters) refers to the interests of amenity and public safety. The relevant matters to assess are:
- general location of development and the effect on visual amenity;
 - scope for advertisement to make a positive contribution to the locality;
 - design of structures and relationship with premises on which located;
 - effect of the proposal on permanent redevelopment of the land;
 - public safety resulting from the positioning of the design of the display;
 - ease with which structure is capable of being maintained; and
 - number of advertisements in locality and cumulative effect on visual amenity.
16. Policy DC15.2 lists further criteria:
- no harm to character or architectural features of a building, or its use;
 - in scale with the locality and relate properly to the site on which they stand;

- not intrude into residential neighbourhoods and high amenity value areas;
 - no harm to public safety or adverse effect on flow of traffic by reason of its position, size, or design.
17. Policy DC15.3 envisages that conditions may be imposed in order to protect safety and amenity.
18. CS Policy CC9 aims to preserve or enhance heritage assets including listed buildings and conservation areas. UDP Policy DC18 seeks to enhance the appearance or character of the Conservation area. UDP Policy DC19 seeks to preserve and enhance the setting of listed buildings by managing the design of new development in their vicinity.
19. In this regard it should be noted that the National Planning Policy Framework section 12, advises that control over outdoor advertisements should be *"...simple, efficient and effective"* and *"advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts."* Thus, under Regulation 8, control of advertisements may only be exercised in the interests of amenity and public safety, taking account of any material change in circumstances that has occurred. Therefore, application of Council policies are material only in so far as they are relevant to the criteria set out in the Regulations.
20. PPG at section 079 states that amenity considerations include:
- "...the local characteristics of the neighbourhood: for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features...whether it is in scale and in keeping with these features. This might mean that a large posterhoarding would be refused where it would dominate a group of listed buildings."*

Appeal A

21. The appeal site is a triangular shaped parcel of land on the south-western corner of a surface car park owned by ECP which fronts Miller Street. The car park adjoins Beswick Row which runs at right angles to Miller Street and provides access to the car park. The junction where Beswick Row meets Miller Street lies just beyond the appeal site to the west. The site is located opposite the CIS grade II listed building which is set back from Miller Street on its south-western side.
22. The Council states that the advertisement display is overly large, visually dominant and obtrusive, having a detrimental impact on the character and appearance of two regeneration areas, nearby listed buildings and the setting of the nearby Shudehill Conservation Area.
23. The appeal site is in the area subject to the NOMA strategic regeneration framework, where there are large, cleared sites and historic offices and warehouses, several of which are Grade II listed. Their re-use is an integral part of the NOMA regeneration strategy. The area around the appeal site has a mix of uses including office buildings, residential apartments, commercial uses, entertainment uses, car parking and major transport hubs.
24. There are other listed buildings in the general vicinity and several developments have contributed to the regeneration of this part of the city centre including the Cooperative headquarters nearby, an iconic building. The

appeal site is in a major office zone. The Council lays a great deal of emphasis on future plans for the area as well as what it has thus far achieved, however it was agreed at the hearing that I must focus on the situation as it appears on the ground as far as concerns the effect the advertisement has on amenity.

25. The current display on the appeal site is a single sided digital display in a portrait form with the dimensions 6.5 x 4.4 x 0.7m. It has a contemporary appearance and operates on a full motion basis in accordance with the conditions set out in the appeal decision letter dated 17 December 2013, Ref APP/B4215/H/13/2200416. Its rear has a plain black aluminium facade which faces the adjoining car park behind which are the pay and display machine and associated signage in connection with the car park.
26. Most of the surrounding new development comprises multi-storey buildings which are prominent additions to the city scape when viewed from street level. Although other advertisements can be found in the vicinity, the advertisement display is relatively isolated. In scale it is dwarfed by the commercial buildings which are situated in the surrounding area. Although it is readily visible in its location at the corner of the car park and can be viewed for some substantial distance it does not dominate any of the buildings nearby. In relation to its surroundings, it is not in my opinion overly large or dominant in its appearance. Nor does it have any adverse effect on the listed buildings or the setting of the conservation areas. It adds a modicum of interest to the street scene at an intermediate scale between the high-rise blocks and the human interactions at ground level.
27. I appreciate the high quality of many of the buildings that surround it, however whilst having regard to the policies cited by the Council, it is impossible to conclude that its design, including its size and materials used, or its location spoils the character and appearance of the area or causes substantial injury to amenity. My view is unaffected by consideration of the cumulative impact of other advertising material to be found in the surrounding area. I see no good reason to impose additional or alternative conditions relating to the use of the site. Therefore, the appeal will be allowed.

Appeal B

28. The appeal site is in the New Cross neighbourhood subject to the Manchester Northern Gateway Strategic Regeneration Framework 2019, providing for a residential-led neighbourhood with higher density housing types and tenures and non-residential active frontages at ground level on key routes such as Dantzic Street. The neighbourhood is planned to be connected to the regeneration of Victoria North. A new City River Park would connect Queens Park and Angel Meadow. Connectivity from the city centre and NOMA to areas and existing communities of Collyhurst in the north together with New Cross to the east and Angel Meadow to the south is *"vitally important as part of improving connections, new development and high quality public realm"* (Lower Irk Valley – Neighbourhood Development Framework, January 2016).
29. The Manchester Strategy, January 2016 and City Centre Strategic Plan 2015-2018, March 2016 see the city centre as a key driver of economic growth, where more residential use is fundamental to creating a major visitor destination. The appeal site is also in 'Zone A' in the New Cross Neighbourhood Development Framework, July 2015, having a historic grid pattern where key listed buildings reinforce a sense of place and local character. Zone A is

planned to accommodate residential accommodation in a high quality and well managed environment responding to the grid pattern and ensuring active frontages with balconies and roof spaces. Night-time uses beyond 2300 would not be supported. The New Cross Public Realm Strategy, November 2017 supports appropriate public realm and neighbourhood infrastructure linking New Cross with the wider area, particularly the city centre.

30. Whilst recognising continuing plans for the area which the Council promotes, it was undisputed at the hearing that the effect the advertisement has on amenity and danger to the public must be judged having regard to the present situation, notwithstanding that the advertisement has had the benefit of deemed consent under the Regulations for a considerable time.
31. The appeal site is located in front of a car park at a busy signal-controlled staggered crossroad box junction serving 4 junctions and including cycling and pedestrian facilities. The display is single sided and has the dimensions 18.6m x 4.65m x 0.265m, erected 2m above ground level on steel legs. It is a very large structure that appears overbearing and dominates the immediately surrounding area above the pavement at ground level. The property immediately adjacent to the car park, known previously as Swan House, has now been demolished and redevelopment has substantially progressed for a 31 storey mixed use, residential led development and improvements to the public realm nearby. Other sites now completed or nearing completion include the Marriott Hotel, Stay City apart hotel and several residential schemes on Oldham Road, Addington Street, Goulden Street and Thompson Street.
32. My site inspection included a tour of the advertisement display from all angles, at close quarters and from a distance. The Regulations state that when considering whether to serve a discontinuance notice, regard shall be had to any material change of circumstances that has occurred. I was struck by how large and incongruous the advertisement structure was against the background of the newly developed Swan House when viewed from certain angles, compared with how that building during construction was shown in some of the submitted images.
33. Swan House is a high-quality development where the use of the site for the advertisement obscures and detracts from attractive architectural features of the building from several viewpoints such as its fenestration, materials but also including its interesting articulated form and disposition in the street scene. More generally the use of the site for advertisement displays significantly undermines the attractive nature of much of the residential and other forms of built development nearby.
34. Despite the quality of materials used in the advertisement, its scale and bright and constantly changing displays also jar with the appearance of the surrounding buildings. Overall, it presents as an intrusive feature in the street scene, considerably at odds with the improved appearance of built development and the public realm in the area. The large blank featureless rear of the structure, visible from within the car park and the street alongside it, adds to my concern. I therefore find that the use of the site for the advertisement display causes substantial injury to the character and appearance of the area in its urban context.

Public safety

35. The Council objects to this location for the advertisement structure within the controlled area of a signalised junction, in the line of sight of traffic approaching from Angel Street with its potential to distract users.
36. An LED advertising display screen has been implemented at the site and been in operation since 2021. The appellant has reviewed the detailed accident statistics and given the volume of traffic travelling through this area close to the existing LED display screen, it considers that this part of the road network has a reasonably good safety record. With each of the reported incidents there was no suggestion that the previous advertising display was implicated as the cause of any of them.
37. At the hearing the appellant's highways expert laid heavy emphasis on his assertion that the accident data showed that there could not be any adverse effect on public safety due to the display. This appeared to be a somewhat dogmatic approach and reflected in the corresponding highways statement which had it that:
- "the Council was wrong in looking at a future situation rather than the current situation ie "...the retention of an illuminated digital sign at this location is likely to add additional conflicts ...". This is a little baffling given that the test is one of substantial harm now."*
38. According to the appellant's highways expert "substantial harm to public safety" was the correct policy test (statement at paragraph 2.2.5), but this is incorrect and misleading. The test is plainly whether it is necessary to discontinue a deemed consent "to remedy...a danger to members of the public" (Regulation 8(1)).
39. In this connection two matters are noteworthy. Firstly, the position of the indefinite article in "a danger" renders it impossible in my view to read across the word "substantial" as it relates to "substantial injury to amenity of the locality". The expert has therefore wrongly conflated the two tests.
40. Secondly, a "danger" is well understood to mean a state of affairs in which the potential for harm in the future exists, even although actual harm may not currently be caused. Were it otherwise, actual physical harm to members of the public due to the display must have occurred or be occurring before the criterion in the Regulations could be met.
41. Furthermore, the absence of significant accident data pointing to harm having been caused due to advertisement displays, carries weight of course but should not be relied on to the exclusion of consideration of the potential for harm being caused in the future due to other factors unrelated to accident data.
42. The appellant considered that it was not a particularly complex junction, nevertheless it is a significantly busy junction in the urban environment where proposals should be considered on a site-by-site basis to ensure that the individual circumstances and physical constraints are fully assessed. Particular consideration should be given to advertisements sited where drivers need to take more care, for instance at junctions of any kind.
43. The advertisement is sited on an existing site boundary and marginally set-back from the nearest road edge, in a highly prominent location. Rochdale Road is a two-way highway involving two lanes together with a pedestrian footpath on both sides. From Angel Street the advertisement is likely to attract

the attention of road users travelling toward it. Whilst the scale of the display, among other matters would not be mistaken for a traffic signal, road sign or the like, the multiple large images could add to driver distraction at this busy junction. However, a driver would be immediately conscious at some level of its existence as it came into view, and thus be more likely to factor this into their behavioural responses at the junction. Where drivers are approaching the advertisement structure from a more oblique angle on Rochdale Road it is not in the driver's direct eye line making it less likely they would turn their attention away from the road.

44. The illuminated display frequently changes in a continuous sequence, of colours and images. However, I disagree with the Council that the advertisement obscures the signal head to the extent that confusion could be caused. The potential for distraction exists as with many aspects of driving in an urban context, but a reasonably careful driver would not in my judgement misread the signals. The directional signing of traffic into and out of the junction is clear enough. LED advertising displays are established features of large urban areas and here in this location, drivers taking reasonable care should not be so distracted by the advertisement such as would make it inherently dangerous to members of the public.
45. Although the proposal may be similar to other LED display screens found elsewhere including in the city centre, and I have also considered previous appeal decisions submitted, my judgement on this aspect of the appeal is based on the particular characteristics of the appeal site including the surrounding road network.

Conclusion on Appeal B

46. Having regard to all of the above, including the written and oral submissions of the main parties and other interested persons, I conclude that the advertisement causes substantial injury to the amenity of the locality, including the character and appearance of the site and the surrounding area, contrary to the criteria set out in Regulation 8. Consequently, the appeal fails.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr David Manley KC	Barrister, Kings Chambers
Susan Jones BA (hons) BPL MEWI affiliate member RIBA	Planning Consultant, Director of the Susan Jones Consultancy.
Phil Wooliscroft HNC MSc	Highways Engineer, Partner, Eddisons

FOR THE LOCAL PLANNING AUTHORITY

Mr Ian Ponter	Barrister, Kings Chambers
Adam Neil	Enforcement Team Leader

INTERESTED PERSONS

Jessica Tucker