The Planning Inspectorate

Appeal Decision

Site visit made on 23 January 2025

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 28 February 2025

Appeal Ref: APP/A1530/G/23/3317107
Land on the south side of Greenstead Road, Colchester, Essex CO1 2SH

- 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 display of an advertisement with deemed consent.
- The appeal is made by Mr Damian Cox, Wildstone Investments (C) Limited against discontinuance action by Colchester Borough Council.
- The Council reference is 004895. The Discontinuance Notice is dated 3 January 2023. The advertisements concerned are 7 no. 48-sheet (6m x 3m) externally illuminated billboard paper and paste advertising displays.

Decision

1. The appeal is dismissed and the discontinuance notice is upheld. The notice shall come into effect on the date of this decision and the use of the site for the display of advertisements shall be discontinued within a period of six months from the date of this decision.

Preliminary Matter

2. The billboards have external light fittings attached but these were not working on the date of the site visit. However, the discontinuance notice describes them as externally illuminated and the appellant's appeal statement refers to them as such.

Main Issue

3. The main issue is whether the continued use of the site for the display of advertisements causes a substantial injury to the amenity of the area.

Reasons

4. The appeal is against a discontinuance notice served against the use of a site along the southern side of Greenstead Road for the display of advertisements. The advertisements concerned are a row of seven externally illuminated 48-sheet billboards arranged in a line between Hythe Station Road and the Oyster Park industrial estate. For identification purposes the billboards are given letters A to G on the existing site plan. The displays have been in place for at least 65 years with the first records dating from 1958 and there is no dispute they have deemed consent under the Advertisement Regulations[1]. The well-established road runs through a mixed-use area with housing on one side and industrial/retail uses on the other. However, the nature of the area is

[1] Regulation 6 Schedule 3 Class 13

changing with the large industrial building which used to lie behind the line of billboards recently being demolished in advance of redevelopment.

5. There is some commercial advertising in the vicinity with 'Tesco' signage on the superstore on the other side of Hythe Station Road, an 'Oyster Park' sign with various individual business signs displayed at the industrial estate on the other side of the appeal site and a number of 'Screwfix' signs on the next building before Davey Close. However, all these signs are smaller than the billboards, displayed on or near the businesses concerned and are to be expected to draw attention to the businesses operating in the area. By contrast, the seven large externally illuminated billboards, plus one further 48-sheet size digital screen in front of Oyster Park, display general paid-for advertising material unrelated to nearby businesses.

6. Due to their number, close proximity and size, notwithstanding four intervening trees, the seven 6m x 3m externally illuminated billboards have a significant detrimental effect on the street scene as seen by passers-by and the residential amenity of the dwellings on the opposite side of the road. Billboard B faces directly towards the front living and bedroom windows of Nos 196 and 194 Greenstead Road, the dwellings built hard up to the footway only about 16 m away with no prospect of any intervening screening. Similarly, Billboard C faces the front living and bedroom windows of Nos 192, 190 and 188, Billboard D the front windows of Nos 186, 184 and 182 and Billboard E the front windows of Nos 180 and 178. Billboard A faces diagonally across the road towards the front windows of Nos 206 and 204 from slightly further away with the front windows of Nos 202, 200 and 198, set back behind narrow front gardens, having oblique views of both Billboards A and B. Finally, the first-floor windows of No 174, whilst set back with some hedge screening on the boundary, directly faces Billboards F and G. In this way the living conditions of the occupiers of about 16 properties are significantly adversely affected by the series of large advertising billboards immediately opposite their front windows and lit up at night, even if relatively dimly as claimed by the appellant.

7. As the *Stadium Capital Holdings* case[2] quoted by the appellant makes clear, the longevity of the advertisements and the absence of recorded complaints, whilst a material consideration, 'will at best carry very limited weight… since the question of injury will essentially depend on the inspector's judgement having seen the advertisement on site' (paragraph 12).

8. Until recently, the line of billboards provided a roadside screen for the former Garnet Bearings Factory which filled the site behind, a large unattractive industrial building dating from the 1950s/1960s with low pitched roofs and unrelieved brick gables set a few metres back into the site[3]. Indeed, this may have been their rationale. This factory building has recently been demolished to allow for redevelopment, an objective promoted by the site's inclusion in the East Colchester/Hythe Special Policy Area defined by the Colchester Borough Local Plan Section 2 adopted in 2022 (the CBLP S2). CBLP S2 Policy EC2 seeks the regeneration of this area, which includes rundown and underused industrial land[4], with a mix of commercial, community and residential uses, part of which is to 'deliver significant public realm enhancements appropriate to local context… improving the environment…' The removal of the line of billboards

[2] Stadium Capital Holdings No. 2 Ltd v SSCLG [2013] EWHC 3548 (Admin)
[3] As shown in the appellant's photographs, both modern and from the 1950s.
[4] CBLP S2 Paragraph 6.77

would contribute to this adopted policy and its advent in 2022 and subsequent demolition of the factory prior to redevelopment is a material change in circumstances that must be taken into account.

9. The current proposal for the site is a residential led scheme of 65 apartments in three blocks four and five storeys high set along the main Greenstead Road frontage with two commercial units at ground floor level on the return frontage on Hythe Station Road opposite the Tesco service yard. This scheme was given planning permission in July 2024[5] and some reserved matters are being discharged. The appellant's argument that the billboards would benefit the street scene by helping to screen the domineering presence of the residential blocks is belied by the scheme drawings which give the prospect of an attractive albeit perhaps bulky scheme addressing the road. This scheme may not progress, but in any event the billboards would run across the principal roadside frontage of any redevelopment, however designed and for whatever uses, obscuring the view of the relevant elevation, precluding the benefit of a significant enhancement of the street scene compared to the past.

10. These billboards have been in place since at least the late 1950s, 65 years ago, maybe longer. There is no record of them ever having been granted express consent. In the intervening period expectations of public and private amenity have greatly increased and these are reflected in higher design and amenity standards including the National Planning Policy Framework statement in 2012[6] that 'poorly placed advertisements can have a negative impact on the appearance of the built and natural environment'. In the development plan, Policy SP7 of CBLP Section 1 adopted in 2021 and CBLP S2 Policy DM15 require high standards of urban design, the preservation and enhancement of the quality of existing places, enhancement of the public realm, good standards of amenity, and a visually attractive sense of place. The billboards significantly conflict with these policies which set higher standards of amenity than were applicable in the late 1950s. These recent policies and the expectation of higher standards of amenity today comprise a further material change in circumstances that must be taken into account.

11. Proposals for the replacement of Billboard A on the corner of Hythe Station Road with a digital screen was dismissed on appeal in March 2022[7] and the replacement of Billboard G at the other end of the run with a digital screen was dismissed on appeal in June 2023[8]. These proposals were found to have an unacceptably harmful effect on the visual amenity of the area, in particular on the living conditions of nearby residents, even though they would have included the removal of two and all six other billboards respectively. These decisions related to the relative impact of digital as opposed to paper and paste billboards on the amenity of the area but not to the impact of the paper and paste boards in the first place. The latter is the issue in this appeal.

12. The digital screen in the forecourt of the adjacent Oyster Park industrial estate was allowed on appeal soon after September 2021[9] and the appellant argues this demonstrates the acceptability of billboards in the area. However, this

[5] Reference 220317
[6] Then paragraph 67. The latest December 2024 version includes a similar statement in paragraph 141.
[7] Reference APP/A1530/Z/21/3280208
[8] Reference APP/A1530/Z/23/3320108
[9] Reference APP/A1530/Z/21/3270360. Unfortunately, the date of the appeal decision appears to be missing.

decision necessarily took the presence of the existing billboards as a given[10], not considering to what extent these harm the amenity of the area in the first place. The latter is the judgement required in this case. In addition, now that this digital display has been erected, its actual detrimental impact on the amenity of the area can be judged. In fact the screen is not 'angled away' from the residential development on the opposite side of the road, a key point said to be in its favour[11], but at about 90º to the road the regularly changing illuminated displays up to midnight daily can be clearly seen from the front facing windows of Nos 172-166, four bungalows set well above the road with negligible frontage screening. Whilst an oblique view and somewhat further away, the impact on the amenity of these residents is significant and in my view does not justify the retention of the seven nearby billboards.

13. There are two further 48-sheet billboard advertisements mounted on Nos 136 and 233 Greenstead Road but these are some distance down the road, seen as individual displays, sited at 90º to the road on flank walls between properties with front gardens and only fully seen when close to the site. These billboards can therefore be readily distinguished from those the subject of this appeal.

14. The appellant argues that the discontinuance notice infringes their rights under Article 1 of the First Protocol of the Human Rights Act 1998, namely that no-one should be deprived of their possessions except in the public interest. The appellant currently possesses land said to be worth £200,000 with billboards in place, very little if they are removed. Certainly the discontinuance notice would cause a financial loss to the appellant, although the quantum is not justified with any detail. However, it would appear this valuation assumes the right to display advertising billboards with deemed consent in perpetuity, when legislation specifically provides for the possibility of termination by means of the discontinuance notice process. This process establishes whether the advertisement causes substantial injury to the amenity of the area and thus should be removed in the public interest as is the case here. The potential for judicial review of the decision also protects the human rights of the appellant[12]. Material changes in circumstances since the late 1950s have been taken into account. In balancing the injury to amenity and the public interest with the value of the appellant's property, it is relevant to note that the legislation makes no provision for compensation in relation to a discontinuance notice, unlike the revocation of an express consent, and even then no compensation is payable for any depreciation in the value of any interest in land[13].

15. In this case the control of the use of the appellant's property is in accordance with law and is proportionately justified as the substantial injury to amenity is sufficient to justify the advertisement's removal. A less intrusive measure is not available to remedy the injury. The appellant's rights are thus outweighed on this occasion.

Conclusion

16. Having regard to the above, the continued use of the site for the display of advertisements causes a substantial injury to the amenity of the area and

[10] Eg paragraphs 3 & 4: 'Further along Greenstead Road are a number of illuminated poster signs…' 'Signs of this size and design do not appear to me to be unusual in the context of the commercial setting of Oyster Park…'
[11] Paragraph 6
[12] Bryan v UK [1996] JPL 386
[13] Advertisement Regulation 19 (2) (b)

should be discontinued in the public interest. The discontinuance notice should therefore come into effect.

17. With regard to the period within which the billboards should be removed, the discontinuance notice allowed a period of three months. However, following further consultation with the parties, the appellant stated a reasonable period would be six months[14]. I have no reason to disagree.

18. The appeal should therefore be dismissed and the discontinuance notice upheld with a six month period for compliance.

David Reed

INSPECTOR

[14] Email from Wildstone dated 13 February 2025.