



Appeal Decision

Hearing held on 4 February 2025

Site visit made on 4 February 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2025

Appeal Ref: APP/U5360/G/24/3354819

1 Great Eastern Street, Hackney, London EC2A 3EJ

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a Discontinuance Notice relating to the display of an advertisement with deemed consent.
 - The appeal is made by King Media Limited against discontinuance action by the Council of the London Borough of Hackney.
 - The Council reference is 2024/0098/ENF.
 - The Discontinuance Notice is dated 30 August 2024.
 - The advertisement concerned is an externally illuminated mesh shroud measuring approximately 10m x 10m, located from first to third floor on the elevation fronting Great Eastern Street.
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Decision

1. The appeal is dismissed. I direct that the Discontinuance Notice shall be varied by:
 - a) deleting the requirement in section five of the notice (what you are required to do) and replacing it with the following requirement: *Discontinue the use of the Site for the display of the Advertisement described above in Section 3.*
2. Subject to this variation, the Discontinuance Notice shall come back into effect immediately and the use of the site for the display of an advertisement with deemed consent shall cease by the end of six months from the date of this decision.

Application for costs

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

The Discontinuance Notice

4. A case was made by the appellant concerning alleged defects in the notice. In broad terms this is based on their view that it is not clear whether the notice was issued under Regulation 8(1)(a) or 8(1)(b). Moreover, that the statement of reasons for issuing the notice does not clearly explain why the Council considered that a substantial injury to the amenity of the locality has been caused and why they considered it necessary to serve the notice.
5. The notice identifies the land to which it relates in section two, with reference also to a plan attached to the notice. Section three describes and identifies *the advertisement* [my emphasis] to which the notice relates, and a photograph of the advertisement is appended to the notice. I have no doubt that any person who received a copy of the notice would be able to identify the advertisement to which it relates.

6. Read fairly, it is evident that the notice is targeted at the advertisement and was issued under Regulation 8(1)(a) and it is on this basis that the appellant made their case, as evident from their instruction to Dr Miele.
7. Planning Practice Guidance (PPG) advises that the reasons for taking action 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.
8. Whilst the appellant does not agree, the reasons given are specific to the advertisement and clearly set out why it is considered to cause substantial injury. It would have been clearer if the designated heritage assets were named in the reasons, however the reference to substantial harm and to the terminology and test set out in the National Planning Policy Framework (the Framework) does not give rise to any fundamental misunderstanding about what makes the display unacceptable to the Council.
9. Whilst the requirement is clumsily drafted to refer to advertisements (plural), this can be varied, as suggested by the Council, without injustice to the appellant, since this would not increase the scope of the notice or requirements.

Preliminary Matters

10. 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 PPG.
11. PPG 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.
12. The guidance goes on to state by way of example: *This might mean that a large poster-boarding 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.*
13. Powers under the Regulations to control advertisements may be exercised only in the interests of amenity and public safety, having regard to any material change in circumstances that has occurred. Therefore, application of development plan policies are material only in so far as they are relevant to the criteria set out in the Regulations, in this case amenity, since there is no dispute that there is no harm to public safety.
14. In the notice, the Council referred to policies DC3, D8 and HC1 of the London Plan 2021 and policies LP1, LP2, LP3 and LP7 of the Local Plan¹. I have had regard to these policies in so far as they require high quality design, including in the design of advertisements which must be sensitive to the character of an area through size and siting, especially those areas of historic significance, the preservation or

¹ Hackney A Place for Everyone Hackney Local Plan 2033 Strategic Planning Adopted July 2020

enhancement of the historic environment and that there are no significant adverse impacts on amenity in respect of outlook and artificial light levels.

15. The site is located within the South Shoreditch Conservation Area (SSCA), and I have taken into account the desirability of preserving or enhancing the character or appearance of the Conservation Area in my decision.

Main Issue

16. Whether the continued use of the site for the display of the advertisement would cause substantial injury to the amenity of the locality.

Reasons

17. It is stated in the report prepared by Dr Miele, that the character of the Shoreditch High Street area reflects its past and present role as the retail focus of South Shoreditch with shops, banks, offices, cafes, and former furniture showrooms located in the area. Further, that the commercial nature of the area is a longstanding one, linked to its association with the furniture industry and other commercial uses, and that character is expressed in the architecture of its buildings and a proliferation of advertisement and signage.
18. As also stated, the mix of grand four and five storey former retail and warehouse buildings lining the main thoroughfares in combination with smaller buildings set behind the main frontages, gives the area a distinctive character. I also observed, the distinct contrast in scale between the four and five story buildings fronting the High Street in this part of the Conservation Area and the tall contemporary city buildings behind, such that there is a clear break between inside and outside the SCCA as noted by Dr Dyer.
19. The appeal site occupies a corner location on a large busy signalled controlled junction, divided by islands, and featuring various lanes including cycling and pedestrian facilities. Whilst the site is on the edge of the SCCA and the junction where the appeal site is located is not identified as a key view or landmark feature, the advertisement is undoubtedly prominent in views.
20. The building dates from the 1870s and is four storeys, and as stated in the appellant's submissions *is one of the more ornamental facades of Great Eastern Street*. Whilst it is not locally listed it is identified as a positive contributor to the SCCA in the Conservation Area Appraisal and as a building of townscape merit in the Future Shoreditch Area Action Plan².
21. There is an interesting and broad range of advertising across the SCCA including, graphic media, street art/graffiti and historic advertisements which form part of the fabric of buildings which, it seems, is an evolution of its historic character and reflects the commercial uses. Dr Miele, in his report, stated that since the later 20th century Shoreditch has seen considerable growth as a hub for creatives, tech entrepreneurs and hospitality – uses which are promoted by the Council. And, that character is expressed by the proliferation of media across the area in the forms described.
22. However, except for street art, advertisements in the vicinity tend to be confined to street level and appear not to obscure architectural details, in particular windows. I

² Draft Future Shoreditch Area Action Plan April 2019

observed the digital advertisement display at around 38 Great Eastern Street but that is not as large and located on the gable end of the building and is not comparable. Those advertisements at 2-4 Great Eastern Street are being pursued by the Council. At the Hearing Dr Miele confirmed that he was not aware of any other directly comparable advertisements in the locality.

23. The Regulations state that when considering whether to serve a discontinuance notice, regard shall be had to any material change in circumstances that has occurred. Whilst the Council provided no substantive evidence to support their assertion that the appearance of the area has significantly improved since the advertisement was first installed, it was agreed that this is not a threshold test. Furthermore, I have not been provided with legal authority which supports a proposition that there needs to have been a change in circumstances to justify the service of a notice.
24. The advertisement is substantial and appears conspicuously out of scale, dominating the façade and obscuring much of the architectural detailing of the building. Not only does it undermine the contribution that the building makes to the townscape, but significantly undermines the attractive and historic nature of much of the built development nearby. Whilst I acknowledge the many existing sources of illumination, including from the offices behind, bus stops and other advertisements, the illumination in this case emphasises the scale and incongruity of the advertisement.
25. Overall, the advertisement presents as a dominant and intrusive feature in the street scene, considerably at odds with the appearance of built development in the area. For these reasons, the display of the advertisement causes harm to the character and appearance of the SCCA and substantial injury to the amenity of the locality.
26. That the advertisement is taken down from time to time and the façade can be appreciated is a matter of little weight, since there is substantial injury when it is displayed.
27. In respect of the amenity of occupants, the parties agreed that this could constitute another relevant factor (Regulation 3(1)(b)). I acknowledge the representations from occupants of two of the flats, one of whom is not a permanent resident but occupies the first floor flat from *time to time*.
28. However, and whilst the advertisement is not opaque, its position close to the windows is oppressive and results in a bleak outlook. Moreover, the illumination would be harmfully intrusive to occupants of the flats, particularly the first floor flat. For these reasons there is material harm to the amenity of occupants.
29. I viewed from inside one of the flats later in the afternoon on a relatively overcast day, and did not observe the advertisement to have any material impact on levels of daylight. Moreover, given the advertisement is sited on a broadly north facing elevation, and in the absence of substantive contrary evidence, I do not consider there would be any material harm because of overshadowing.
30. The report prepared by CUBED stated that there has been deterioration in the external fabric of the building in the normal way due to a lack of maintenance, and works of general repair are needed to the façades.

31. Whilst the advertisement is not (as the Council accepts) the cause of the deterioration, and it seems has provided some protection to the façade, it seems likely that its presence has hindered maintenance, since it would need to be removed to carry out maintenance, and as it largely conceals the deteriorating condition of the building. The appellant has however submitted a unilateral undertaking which includes enforceable commitments for substantial restoration works to the façade if the appeal is allowed. The Council confirmed that this would overcome their objections.
32. The appellant invited me to give substantial weight to this benefit however, repair and maintenance of a building, whilst not guaranteed, is usually expected. Furthermore, since allowing the appeal would mean that the façade is likely to be covered for much of the time, this is a matter of little weight.
33. As already stated, the reasons for issuing the notice refer to damage to heritage assets (plural) and in the Council's delegated report it is stated that there is harm to the setting of the Grade II listed properties of 5 Fairchild Place and 6-8 Great Eastern Street. However, the Council did not refer to or provide any detailed assessment of such alleged harm in their statement.
34. Dr Miele in his report concluded that there was no harm to the setting of those buildings and *The presence of the advertising shroud does not detract from their strong architectural character, which continues to be appreciated and communicates their special interest.*
35. At the Hearing Mr Dyer confirmed that he did not consider there to be harm to the setting of those listed buildings. Accordingly, based on my observations, and in the absence of substantive contrary evidence, I have no reason to take a different view.

Human Rights

36. The appellant argued that the deemed consent, as well as the practical value of the lease, constitutes a possession for the purposes of Article 1 of the First Protocol (A1P1) to the European Convention on Human Rights. And, that the issue of the notice did not strike a fair balance, was disproportionate and unlawful – in support the appellant referred to the lack of compensation payable, the delay in taking action and the standard of the conduct of the Council.
37. If it were accepted that the right to display (with deemed consent) the advertisement constituted a possession, then the deprivation of that possession, in the absence of a general right to compensation, might constitute a breach of the Convention – although not where it could be established that such dispossession was in the public interest and subject to conditions provided by law.
38. A discontinuance notice permissibly brings to an end activity without compensation. I acknowledge the delay between the withdrawal of the removal notice in 2021 and the issue of the notice, which the Council put down to resourcing issues, and that the Council could have taken discontinuance action as early as 2014. However, whilst delay *may* [my emphasis] call into question the extent of injury, that the advertisement has been in existence for many years is not a compelling argument, particularly since there is no time limit on discontinuance action.
39. Moreover, there has been a history of involvement between the Council and appellant regarding the display of an advertising shroud, dating back to at least

2008, involvement which the Council stated was because of public complaints. Whilst there is no evidence that prior to 2020, the Council had considered discontinuance action, nor is there evidence that the Council gave assurances or led the appellant to believe that no such action would be taken.

40. Moreover, whilst the Council has not issued any other discontinuance notices for advertisements in the SCCA within the last four years, they have issued removal notices, with four examples given and confirmation that they are investigating those advertisements at 2–4 Great Eastern Street.
41. I acknowledge the appellant's misgivings regarding the lack of response to letters in June 2020. However, the Council's actions are not comparable to those in the Megadat³ case, where the decision in favour of the company was made on the basis of *The arbitrariness of the proceedings, the discriminatory treatment of the applicant company and the disproportionately harsh measure applied to it*.
42. The appellant provided no authority to demonstrate that the discontinuance legislation is not intended to or does not strike a fair balance between the competing interests protected by A1P1, and the wider interests of the community (as well as the property rights of developers and neighbours) including the advancement of the policy aims underlying the legislation.
43. I find on this issue that the action taken by the Council was proportionate, serving a legitimate planning aim necessary in the wider public interest and did not constitute a violation of rights that may exist under A1P1.

Conclusion

44. For the reasons given, I conclude that the advertisement causes substantial injury to the amenity of the locality, including harm to the character and appearance of the SCCA and the amenity of occupants. Therefore, I shall dismiss the appeal and uphold the notice.

Felicity Thompson

INSPECTOR

³ Megadat.com. srl v Moldova (2008) (App No. 21151 / 04)

APPEARANCES

FOR THE APPELLANT

Gregory Jones KC	Barrister, Francis Taylor Building Chambers
Alex Greaves	Barrister, Francis Taylor Building Chambers
Simon Ricketts	Solicitor, (partner) Town Legal LLP
Dr Chris Miele IHBC MRTPI	Senior partner Montagu Evans LLP

FOR THE LOCAL PLANNING AUTHORITY

Noemi Byrd	Barrister, Six Pump Court
Adam Dyer	Principal Conservation and Design Officer
Angus Cunningham	Senior Planning Enforcement Officer
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