



# Appeal Decision

Hearing held on 21 February 2006

Site Inspection on 21 February 2006

The Planning Inspectorate  
4/09 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail: [enquiries@planning-inspectorate.gsi.gov.uk](mailto:enquiries@planning-inspectorate.gsi.gov.uk)

**by Malcolm Rowe**

**an Advertisements Appeals Inspector appointed by the First Secretary of State**

Date  
**25 APR 2006**

**Appeal Ref: APP/X5210/H/05/1193009**

**Flank elevation (with a frontage to Rousden Street) of the premises at  
118 Camden Road, London NW1 9EE**

- The appeal is made under Regulation 15 of the Town and Country Planning (Control of Advertisements) Regulations 1992 against a Discontinuance Notice relating to the use of the above-mentioned site for the display of advertisements (with deemed consent).
- The appeal is made by Clear Channel UK Limited against discontinuance action by Camden London Borough Council.
- The Council reference is EN04/1115.
- The Discontinuance Notice was served on 20 September 2005.

**Summary of Decision: The appeal is dismissed.**

## Background

1. Discontinuance action in this case is part of a strategy, being undertaken by the Council's Planning Enforcement Team, to target large format advertisement displays that are considered to be detrimental to the interests of amenity and/or public safety, concentrating on major thoroughfares and conservation areas. The Council have not raised a public safety objection in this case.
2. A Committee report dated 21 December 2004 is at Appendix 3 to the Council's written statement and gives a detailed background to the initiative. It is clear from the report that the Council appreciate the different actions open to them including, where an advertisement display or the use of the site enjoys deemed consent under the Regulations, serving a discontinuance notice under Regulation 8 where necessary to do so in order to remedy a substantial injury to the amenity of the locality.
3. The planning history of outdoor advertising on the site is fairly complex. There is evidence in particular that the site previously supported a traditional 48-sheet display and that this has been changed to a modern-style More Square panel with internal illumination. There is in any event a general agreement between the parties that for present purposes the use of the site for the display of advertisements enjoys 'deemed consent' by virtue of Class 13 in Part 1 of Schedule 3 to the Regulations.
4. By acknowledging the deemed consent under Class 13, the Council clearly accept that, in this particular case, the change from a traditional 48-sheet panel to a modern-style More Square did not result in a substantial alteration in the manner, or the use of the site since 1

April 1974, in the manner envisaged in the Conditions and Limitations of Class 13(1). However this matter should not be confused with, and certainly does not override, my obligation still to consider, for the purposes of determining the appeal, whether the use of the site for the display of advertisements with deemed consent causes a substantial detriment to amenity.

#### **Main Issues**

5. I consider the main issues to be:

- the validity of the Notice
- whether the use of the site for the display of advertisements with deemed consent constitutes a substantial detriment to the visual amenity of the locality.

#### **Planning Policy**

6. The Council have referred to their advertisement control policies, and more general environmental protection and enhancement policies, contained in their Unitary Development Plan and Supplementary Planning Guidance. The Regulations require that decisions be made only in the interests of amenity and, where applicable, public safety. Therefore the Council's policy advice/guidance cannot be decisive for present purposes; although I have taken it into account as a material consideration.

#### **The Validity of the Notice**

7. The Appellants contend that the discontinuance notice is fundamentally defective on the ground that, although the Council's Constitution provides the Director of Environment with the power to issue discontinuance notices, the Council have no clear written chain of delegation of this power to other officers, the matter being dealt with instead by what the Council call "custom and practice". The latter does not provide a written scheme of delegation and without such the Appellants consider that authority for the issue of the discontinuance notice under appeal had not been delegated to the officer who authorised its service.
8. The Appellants distinguish discontinuance action from other, day to day planning matters, because it removes lawful rights. Such rights, in the Appellants' view, must not be removed without a clear written chain of authorisation. The Appellants also emphasise that discontinuance action itself is not a day to day event. In this respect it is their understanding that, prior to the recent discontinuance campaign within the Borough, no such notices had been issued by the Council since the date of the Constitution in June 2001. Because of this, the Appellants consider that the Council could not, in any event, rely on "custom and practice" in relation to authorisation for service of discontinuance notices, since none had been established.
9. Having carefully considered the matter I firstly note that the display of advertisements with deemed consent is a qualified lawful use of land. It has always been subject to challenge by the local planning authority (at a time of their choosing) provided the conditions in Regulation 8 are satisfied. The Council have explained how their scheme of delegation operates and in this respect have provided a signed statement, dated 7 March 2006, from their Director of Culture and Environment, confirming that the Council's Assistant Director (Planning) or Manager of Development Control, and in the absence of the Manager of

Development Control, managers of each team within the Planning Division, have been authorised by him to arrange for the issue of discontinuance notices on his behalf. Although the Council's scheme of delegation from the Director downwards appears to be largely a matter of "custom and practice", rather than being established on a more formal written basis, I find no grounds to support the appellant's claim that the person who sanctioned the issue of the discontinuance notice in this case did not have the proper authority to do so.

10. As to the use of the words "custom and practice", this is a general description of the scheme of delegation that, on the evidence from the Council, relates to all planning matters, not just in respect of discontinuance action. Although the Council may have issued few, or indeed no discontinuance notices prior to their recent campaign of discontinuance action, since the introduction of their current Constitution in 2001, no evidence has been presented to me to suggest that their scheme of delegation was any different before 2001. In that event, such "custom and practice" in respect of discontinuance action would stem from many years of the Council's dealings with the advertisement Regulations, prior to the introduction of their current Constitution.
11. The Appellants also contend that authority for issue of the discontinuance notice was sought and given against the incorrect assessment of the panel's amenity merits, because nowhere in the officer's report is there direct reference to the more stringent test of 'substantial' detriment. They add that the inaccuracy of the assessment is apparently confirmed by paragraph 3.3 of the report of the Director of Environment to the Development Control Sub-Committee where it is acknowledged that the site had historically had advertisement displays since April 1974, had changed in appearance but as a matter of fact and degree did not cause harm to amenity or public safety.
12. However I note that the reporting officer's evaluation was clearly made taking into account that deemed consent under Class 13 still applied. And when assessing 'visual impact', the officer concluded that the display created an unduly disruptive feature on the host building and an obtrusive feature within the wider street scene. Furthermore, the 'draft' discontinuance notice arising from the report specifically refers to 'substantial detriment'; and of course, more importantly, the Notice proper is also good on its face in this respect.
13. When considering the Appellants' further point on the Director's report to the Development Control Sub Committee, it is important to note the background at paragraph 3.2 of the report, under the general heading 'Progress', where Members are told that legal clarification is being sought on a number of sites where the Council's actions are being challenged by the media companies. The Council nonetheless acknowledged at the Hearing that paragraph 3.3 of the Director's report was potentially misleading and that taken out of context, it would not support a decision to issue a discontinuance notice. They therefore asked for further time to clarify the matter.
14. In their post-Hearing letter dated 7 March 2006 (Document 9), the Council said that the author was explaining that the test in determining whether or not a display was (still) lawful was whether the change in the display post 1974, for example by the addition of illumination or a revolving mechanism, has caused 'harm to public amenity or public safety' to such an extent that the deemed consent status was lost. And at paragraph 3.3 of the Progress Report in particular, the author was simply trying to explain why, following advice from Counsel, some sites previously reported to Committee as 'unlawful' were now

considered to be lawful (i.e. still enjoyed deemed consent). However it was simply a report for information, not a report on whether discontinuance action itself was appropriate in certain cases.

15. The Appellants in their post-hearing letter dated 14 March 2006 (Document 10) have further challenged the Council's explanation. However the Council's comments in their letter dated 7 March 2006 make sense of paragraph 3.3 in the way that I had already inferred by reading the extract of the Progress Report as a whole. In any event, in the circumstances outlined above and particularly having regard to the panel's significant visual impact as found in the officer's report, I can find no compelling evidence to support the Appellants' claim that authority for the discontinuance notice was sought and given against the wrong criteria.
16. On another matter concerning the validity of the Notice, the Appellants explained that they had been frustrated in their attempts to assure themselves that the procedures laid down in Regulation 8(2) regarding the service of the Notice had been properly followed. In this respect, prior to the Hearing the Appellants had asked the Council for a list of those persons on whom the Notice was served, and the related addresses. At the time the Council had refused to provide this information, claiming confidentiality under the Data Protection Act. The Appellants questioned the Council's attitude, claiming that once issued the Notice was a public document and there could be no reasonable justification for withholding the information.
17. In post Hearing correspondence (admitted as Document 8) the Council explained their stance on this issue more fully, saying that while in response to direct enquiries they were content to confirm whether or not certain persons/addresses had been served with a discontinuance notice, in relation to general enquiries they could not provide a full distribution list unless required or at least authorised to do so by statute.
18. Despite their earlier reservations, at the Hearing the Council submitted the schedule of all those persons served with the Notice for the purposes of Regulation 8(2) (see Document 7), which the Appellants accepted was in order. I am satisfied that the Notice in this case was properly served in this respect and do not propose to comment further within the context of this appeal on the wider issues affecting notice of 'service' raised by the parties.
19. On another matter, although not a contested point, in order to meet the requirements of the power in Regulation 8(1), I propose to insert the words "for which deemed consent is granted under regulation 6" after the words "display of advertisements" in the requirements section of the Notice.

#### **Reasons**

20. The site is the exposed, south-west facing flank wall of premises on the eastern side of busy Camden Road, at its junction with Rousden Street. It is within the recently designated Camden Broadway Conservation Area, where special attention must be paid to the desirability of preserving or enhancing its character and appearance. This designation does not preclude the use of suitable sites for the display of suitably sized and sited poster advertising, particularly on commercial premises in areas reflecting a fair degree of commercial activity. However it is to be expected that a strict control will be maintained to ensure that the use of such sites for outdoor advertising does not spoil the appearance of any building or the area generally.

21. The 3-storey property in this case is at the end of a terrace of broadly similar buildings apparently dating from Victorian times. In common with most of the neighbouring buildings, it contains a modest shop at the ground floor level. The shop in this case has a return frontage to Rousden Street. However the terrace which is more generally constructed in stock brick punctuated with modest sash windows still reflects a largely domestic scale and an original residential character at the upper floor levels. The conservation area has a generally well ordered mix of residential and commercial uses although Rousden Street provides access to a mainly residential enclave off the main road.
22. The poster panel in position measures about 3m square and no effort has been made to integrate its display with the building. Rather it is superimposed apparently as a crude afterthought on the leading edge of the generally restrained and uncluttered side wall. Being designed for internal illumination, it also appears as a distinctly modern feature that is starkly at odds with the traditional character of the building. Furthermore, it is seen against modest, domestic-scale windows on the upper residential aspect of the property, extending from part first floor level to just below the level of the roof. The panel's poor relationship to the building is accentuated by the attendant service platform which also projects crudely from the face of the upper flank wall.
23. I consider that because of its size, distinctly modern form and insensitive siting, the appeal panel appears starkly out of sympathy with this modest, period-style property and relates very poorly to the original, residential characteristics of the building above the shop. The panel is also unduly conspicuous because its roughly 9 square metre display visually overwhelms the more modest advertising on the shop and stands out above the more general ground floor level of commercial activity in the area. Its display in my opinion appears particularly strident and intrusive on the property not only when seen from the main road but also as the focal feature at the entrance to the mainly residential side street.
24. The adverse impact of the display would be even more pronounced when the poster display is fully illuminated, particularly during poor daylight and after dark. The Appellants have indicted their willingness to ensure that the illumination is switched off overnight, say from 10.30pm until 7am. However this would do little or nothing to overcome my principal amenity objections, as outlined above.
25. I have taken into account that a brightly painted railway bridge with painted and board signs crosses the main road at Camden Road Station and effectively closes the view just to the south. However this aspect of the street is mainly evident when looking away from the appeal site. In any event, I do not consider that the railway bridge with its attendant poster and sign advertising ameliorates the appeal panel's visually overbearing impact on the building or the immediate street scene.

#### Scope of the Notice

26. Although it has no material bearing on the merits of this case, it appears that upholding the Notice as served, relating simply to 'The flank elevation, with a frontage to Rousden Street....' might well affect other signs which are being displayed or in future might otherwise have been displayed with the benefit of deemed consent on the return shopfront at ground floor level. Clearly this was not the Council's intention.
27. I have the power to vary the notice by restricting its scope and I am satisfied that by doing so in this case in order to protect the deemed consent rights applicable to the shop, the

interests of the parties would not be prejudiced. Indeed the Council would welcome a variation along those lines for the avoidance of any possible doubt as to their intentions when serving the Notice. Furthermore, the Appellants are clearly aware of the intention of the Notice as originally served. I therefore propose to vary the First Schedule to the Notice (description of site) so that it refers only to the flank elevation above ground floor level.

### Conclusions

28. For the reasons given above, and having regard to all other matters raised, I conclude that the continued use of the site comprising the upper flank wall for the display of advertisements with deemed consent would significantly spoil the appearance of the building, create a gross visual intrusion in the street and be substantially detrimental to the general interests of amenity. It would also be incompatible with the conservation status of the area.

### Formal Decision

29. I dismiss the appeal.
30. I vary the First Schedule to the Notice to read 'The flank elevation at upper floor levels, with a frontage onto Rousden Street of 118 Camden Road NW1 9EE'.
31. I also vary the requirements of the Notice by the addition of the words "for which deemed consent is granted under regulation 6" after the words "the display of advertisements" in the Second Schedule.
32. I direct that the Discontinuance Notice as varied shall come back into effect immediately and that the use of the site for the display of advertisements with deemed consent shall cease within a period of 56 days from the date of this decision.



Advertisements Appeals Inspector

## **ATTENDANCE AT THE HEARING**

### **For the Appellants**

Chris Thomas      Planning Consultant

Tony Dunseath      Clear Channel UK Limited

### **For the Local Planning Authority**

Christine Zacharia

Lucy McConnell-Wood

Diane Fleming      (all for Camden London Borough Council)

### **Documents Produced at the Hearing**

Doc 1 – Attendance Sheet

Doc 2 – Statement read by Chris Thomas

Doc 3 – Extract (para 3.3) from Progress Report on Council's Planning Enforcement Initiative

Doc 4 – Delegated report for discontinuance action showing Authorised Officer Signature

Doc 5 - Copy appeal decision APP/K5600/H/02/1092328

Doc 6 – Example correspondence Appellants/Council requesting DN 'service' schedule

Doc 7 – Schedule of persons/parties served with Discontinuance Notice

### **Documents Produced after the Hearing**

Doc 8 – Post hearing reps re service schedule (Council letter dated 22 February 2006)

Doc 9 – Council's letter dated 7 March 2006 commenting on various validity issues

Doc 10 – Appellants' response dated 14 March 2006 to Council's letter dated 7 March 2006