



# Appeal Decision

Hearing held on 23 May 2006

Site visit made on 23 May 2006

by **Terry Emm**

an Advertisement Appeals Inspector appointed by the Secretary  
of State for Communities and Local Government

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Date

**13 JUN 2006**

**Appeal Ref: APP/X5210/H/05/1194276**

**The Ground, First to Third Floor Flank Elevation of 278 Kilburn High Road, London NW6 2BY**

- 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 a site for the display of advertisements with deemed consent.
- The appeal is made by CB Advertising against discontinuance action by the Council of the London Borough of Camden.
- The Council reference is EN04/0950. The Discontinuance Notice was served on 20 September 2005.

**Summary of Decision: The appeal is allowed and the discontinuance notice is quashed**

## Procedural Matters

1. The appellants assert that the Discontinuance Notice is fatally flawed in that it was not served directly on them as owner or advertiser. A schedule of those served with the notice is at document 3 and the appellants are not included.
2. Regulation 8(2)(a) of the Advertisements Regulations states that the notice "shall be served on the advertiser and on the owner and occupier of the site on which the advertisement is displayed"; the measures to be taken in serving a notice are contained within Section 329 of the Town and Country Planning Act 1990.
3. The appellants argue that whilst the notice was served on Clear Channel UK Ltd who market the site, the notice was not served on CB Advertising who claim to be owners of the site by virtue of being leaseholders and paying the business rate. I note that it was Clear Channel who responded to the Council's Section 11 notice. In my view this would have been an opportunity for them to notify the Council of CB Advertising's interest in the site. Clear Channel's response would have led the Council to believe that no other advertiser was involved and thus no further investigation of interest was necessary.
4. The site is described as the ground, first to third floor flank elevation of 278 Kilburn High Road. No other party has come forward to claim ownership of the property; however I am not convinced by the evidence put forward that CB Advertising have established their claim as owner of the site for the purposes of Regulation 8, though they may be owners of the hoarding. This sets this case apart from appeal decision APP/P4605/H/1186322 where the Inspector quashed the notice on the ground that it had not been served on the owner. Nor do I consider this case to be on all fours with the judgement at document 6 which arose from the serving of two inconsistent enforcement notices.

5. Whilst the appellants were not served the notice directly by the Council, they were forwarded a copy by Clear Channel. This enabled them to lodge the appeal and proceed to Hearing. A detailed Pre-Hearing statement was sent to them thus giving them the opportunity to formulate a response. A further opportunity to state their case and question the Council's decision to issue the notice was afforded to them at the Hearing.
6. In these circumstances, and in the light of the appellants' decision to lodge an appeal on the basis of a forwarded copy of the notice instead of one sent directly to them, I conclude that the appellants have not suffered prejudice by not having received the notice direct from the Council. In consequence I do not consider that there is justification for quashing the notice on the ground that it was improperly served.
7. The appellants further contend that authority for the issue of the discontinuance notice was sought and given against an incorrect assessment on the issue of amenity. The correct test is that of "substantial injury" but the appellants contend that this test was not applied.
8. However, paragraph 5.2 of the officer's report refers to "substantial injury" and I am satisfied that the officer's assessment was soundly based. I find no compelling evidence to support the appellants' contention that authority for the discontinuance notice was sought and given against the wrong criterion.

#### **Main Issues**

9. I consider the main issue to be whether the use of the site for the display of the advertisement is substantially injurious to amenity by virtue of the sign's impact on the host premises, the streetscene in general and the nearby park.

#### **Reasons**

10. The appeal premises are located on the eastern side of Kilburn High Road and comprise a ground floor cafe with three upper floors with a flank elevation facing the access way to a park. This flank wall is displaying a 48-sheet with revolving display. There is also a service platform. Across the access way is a public house.
11. This part of Kilburn High Road comprises substantial 3 and 4 story Victorian buildings with small shops and other businesses on the ground floors. Many of the shops are displaying illuminated fascia and projecting signs with a number of projecting signs above fascia level. The upper floors appear to be in residential or storage use.
12. This is a busy commercial area displaying a large amount of associated signage. In my view the appeal sign is not particularly prominent in the streetscape being set back within a break in the building line and I do not consider it to look out of place in the locality. Kilburn High Road is a major urban transport corridor and in my view such hoardings can be an acceptable feature along such routes.
13. The host building is a large 4-storey 19<sup>th</sup> century property presenting a deep plain side elevation with no architectural features. Given the size of the wall I do not consider the panel to be out of scale with the building. I do not regard the building as being of "domestic scale" in the sense of a family dwelling. The panel does not cut across any ornamentation or other features. I accept that its off centre position leads to an unbalanced effect when viewed critically, but I do not consider this to render the panel so visually unacceptable that it causes substantial harm to amenity.

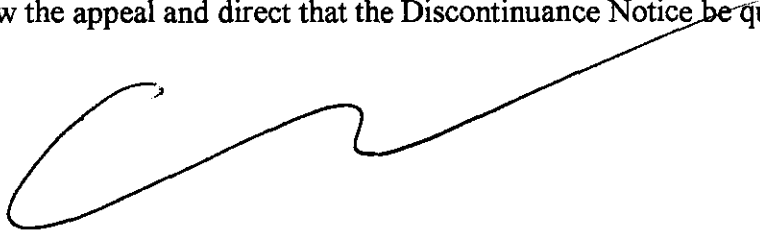
14. I have carefully considered the Council's advertisement control policies and taken them into account as a material consideration. However, these policies appear to relate to the granting of consent. I consider, for the reasons given above, that the use of the site for the display of advertisements with deemed consent does not substantially harm the amenity of the area.

**Conclusions**

15. For the reasons given above and having regard to all other matters raised, I conclude that the continued use of the site for the display of advertisements with deemed consent would not be substantially detrimental to the interests of amenity.

**Formal Decision**

16. I allow the appeal and direct that the Discontinuance Notice be quashed.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line that ends in a small loop.

Advertisement Appeals Inspector

APPEARANCES

FOR THE APPELLANTS

Chris Thomas

of Chris Thomas Ltd

FOR THE LOCAL AUTHORITY

Christine Zacharia

of the Council of the London Borough of Camden

DOCUMENTS

- 1 List of persons present at the Hearing
- 2 Copy of Council's letter to local residents.
- 3 Schedule of persons/parties served with discontinuance notice.
- 4 Statement made on behalf of CB Advertising Ltd
- 5 Copy of appeal decision APP/P4605/H/05/1186322
- 6 Law Report of High Court Judgement *Bambury and Others v London Borough of Hounslow and Another* (April 29 1966).



# Appeal Decision

Hearing held on 16 May 2006

by P Hellowell

Advertisement Appeals Inspector appointed by the First  
Secretary of State

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Date

13 JUN 2006

Appeal Ref: APP/X5210/H/05/1196564

220 Kilburn High Road, London

- 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 a site for the display of advertisements with deemed consent.
- The appeal is made by Salisbury Posters against discontinuance action by Camden London Borough.
- The Council reference is EN04/1151.
- The Discontinuance Notice was served on 18 October 2005.

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

## Main Issues

1. The principle issue in this case is the effect of the continued use of the site for the display of advertisements with deemed consent on the amenity of the area.

## Planning Policy

2. The Council have drawn attention to their policies and I have taken these into account as a material factor in my consideration of the appeal. However, as the Regulations require that the local planning authority, and the Secretary of State on appeal, shall exercise their powers only in the interests of amenity, and where applicable, public safety, taking into account any material factors, I do not consider that the Council's policies should, by themselves, be decisive in the determination of the appeal.

## Reasons

3. The appeal premises are a four storey building located on the east side of Kilburn High Road which is a predominantly commercial thoroughfare at ground level with ancillary and residential uses above. They are just to the north of its junction with Gascony Avenue which is a generally residential road. The ground floor contains a shop unit but the upper floors still retain a domestic appearance with stone detailing round the window openings. At the time of my site visit two 48 sheet poster panels were being displayed one above the other on the exposed southern elevation extending from the bottom of the first floor to about midway up the third floor. The panels each measure some 3m x 6m. They also overhang the rear edge of the wall and in my opinion they appear as overlarge and random additions to the property, particularly when seen in relation to the domestic looking character of the upper floors. The panels also occupy a prominent corner location which makes them widely visible. They are also seen above rather than as part of the ground floor level of commercial activity along Kilburn High Road and I consider, especially because of their size and inappropriate siting, that they stand out as very intrusive features in this street scene. In