



Appeal Decision

Hearing held on 6 November 2012

Site visit made on 5 November 2012

by Roger Pritchard MA PhD MRTPI

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

Decision date: 19 November 2012

Appeal Ref: APP/X5210/H/12/2177459

Railway Bridge, Kilburn High Road, London, NW6

- 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 Primesight Ltd. against discontinuance action by the Council of the London Borough of Camden.
 - The Council reference is EN12/0120. The Discontinuance Notice is dated 12 April 2012.
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Decision

1. The appeal is allowed and the Discontinuance Notice quashed.

Main Issue

2. The main issue is whether the continued use of the site for the display of advertisements with deemed consent would be substantially injurious to visual amenity, having regard to the impact of the existing advertisement on the site to its surroundings.

Reasons

The notice

3. The Description of Site included in the First Schedule to the Discontinuance Notice is neither clear nor accurate. It refers to '*...part of a pillar...*' to the railway bridge on '*...the west side...*' of Kilburn High Road. The Hearing confirmed what I had observed at my visit the previous evening. The relevant pillar is, in fact, the south east pillar of the southernmost of the three railway bridges that span Kilburn High Road immediately to the east of Kilburn Station. Moreover, the Council confirmed to me that the Notice should have referred to the whole of that pillar rather than the imprecise and unspecific reference to '*...part of a pillar...*'
4. These errors are sufficient for me to conclude that the Notice is deficient and should be quashed. However, the appellant, appreciating that the outcome would be delay and that the Council would, as it admitted, then serve a revised Notice, asked me to correct it and to decide the appeal on that basis. The Council agreed. This I shall do, and I shall vary the Notice by substituting for the Description of Site in its First Schedule, the following words –

'The site forms the south eastern pillar of the southernmost of the three railway bridges that cross Kilburn High Road to the east of Kilburn Station and which is immediately to the north of Loveridge Road.'

The background to the Notice

5. Camden has, for some time, been running '*...a hoarding removal initiative...*' The initiative is said to demonstrate that the Council is '*...proactively tackling large hoardings...*' which it considers to be visual clutter with no respect for the host building or the character and appearance of the surrounding area. Priority for the initiative is the removal of hoardings on major routes and within conservation areas.
6. The Council's initiative is reflected in its development plan policies but, though these are a material consideration, the Advertisement Regulations emphasise that the sole basis for determining whether to confirm the Notice must be the interests of amenity and public safety. The Notice site falls into the priority category of a hoarding on a major traffic route but the Council is clear that it represents no risk to public safety. The case for the Notice rests on the Council's assessment that the use of the site for outdoor advertisement constitutes substantial injury to the amenity of the locality.

The amenity of the surrounding area

7. Kilburn High Road is a traditional shopping and commercial thoroughfare that runs along the western edge of the London Borough of Camden. It has seen relatively little structural re-development and most frontage buildings pre-date the turn of the 20th century and are three or, more commonly, four stories in height. Retail or commercial use is accommodated on the ground floor, with the upper floors being occupied by some commercial use or storage but predominantly by residential flats. The railway bridges, one of which includes the site that is the subject of the Notice, are something of a land-use boundary with the area to the north being predominantly residential. By contrast, Kilburn High Road south of the bridges has a lively and cosmopolitan character reflected in the wide range of forms and colours of shop frontages and fascias.
8. Furthermore, advertisement control along Kilburn High Road has been complicated by the different policies operated by Camden and Brent, whose boundary is formed by the road. That may not be specifically relevant to the Notice site but it has created a perceptible difference between the eastern and western sides, with the latter, in Brent, having at least two substantial and prominent illuminated signs at well above fascia height. Their influence on the overall character of the southern part of Kilburn High Road is substantial.

The current advertisement on the Notice site

9. The current advertisement on the Notice site is relatively small – a 3 x 2 metre, unilluminated hoarding – that sits well below the track level of the bridge. Only its upper third – around a metre in height – is above the level of the adjacent shop fascias. In this context, I do not consider the sign to be unduly prominent or to be dominant in relation to either the adjacent buildings or the surrounding street scene. Moreover, walking north on the east side of Kilburn High Road, a significant part of the current advertisement is obscured by an illuminated sign that projects over half the adjacent footway from the fascia of one of the shopfronts that lie between the railway bridge and Loveridge Road. Visiting the area at dusk, I was also struck by how the current advertisement merged into the background compared to the brightly lit, adjacent shop frontages.
10. The Council contends that the current sign clashes with the character of the railway bridge. I was not convinced. The bridge is of conventional design with

brick pillars supporting a cast iron span. It is a dominant structure, closing off views north along Kilburn High Road, but is not of such quality that a relatively small advertisement detracts significantly from its character.

11. The Council directed me to some nearby sites where it had successfully taken discontinuance action. However, the sites to which it referred which are closest to the Notice Site – 218 and 220 Kilburn High Road – had seen the removal of substantially larger hoardings on much more prominent gable end walls and where the hoardings had been completely above the height of the adjacent shop fascias. Neither site therefore seems to me to represent a strong precedent for the Notice site.

Site history

12. The Notice site's history reflects the manner in which Camden's policies have changed. Although the site may have been used for the display of advertisements for some decades, in 1995, the Council chose to give express consent for a back-illuminated advertisement of a similar scale to the unilluminated advertisement currently on the site. This illuminated advertisement may have existed until about 2005. Around that time, the site's advertising rights were sold and the current holder, Primesight, replaced it with the unilluminated sign. However, when Primesight applied in 2010 for a new, internally illuminated sign of a larger scale to that which currently exists, the Council refused express consent and an appeal against that refusal was dismissed in July 2012.
13. I can appreciate the reasons that led the Council to refuse consent for a larger, illuminated sign and which led my colleague to dismiss the appeal against that refusal. I also recognise that the Council's policies towards outdoor advertising may have changed. However, I find it more difficult to identify what factors may have altered over the last twenty years to lead to the use of the site for outdoor advertising now representing the substantial injury to the amenity of the surrounding area required to justify a Discontinuance Notice. That difficulty is exacerbated when the significantly lesser impact of the current unilluminated sign is compared to the illuminated sign for which the Council previously gave consent.

Conclusions

14. The test for confirming a Discontinuance Notice is the need to demonstrate substantial injury to amenity. It is thereby more onerous than that applied to an application for express consent. It reflects, as the appellant reminded me, that this is not an enforcement issue but the withdrawal of rights which Parliament has granted for the display of outdoor advertisements. In the circumstances here, the Council has not persuaded me that the conditions to pass that test have been fulfilled. For the reasons given above I conclude that the continued use of the site for the display of advertisements with deemed consent would not result in substantial injury to the amenity of the surrounding area. I shall therefore uphold the appeal and quash the Discontinuance Notice.

Roger Pritchard

INSPECTOR