



Appeal Decision

Hearing held on 29 January 2013

Site visit made on 29 January 2013

by David Leeming

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

Decision date: 26 February 2013

Appeal Refs: APP/X5210/H/12/2178957 and 2178965

Land adjacent to 279A Finchley Road, London NW3 6LU

- The appeals are 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 appeals are made by Primesight Ltd and by Stadium Capital Holdings No. 2 Ltd against discontinuance action by the Council of the London Borough of Camden.
 - The Council reference is EN09/0102. The Discontinuance Notice is dated 8 May 2012.
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Decision

1. The period for compliance with the discontinuance notice is varied by the deletion of '28 days' and the substitution of '3 months'. Subject to this variation, the notice is upheld and the appeals are dismissed. The notice shall come back into effect immediately and the use of the site for the display of advertisements with deemed consent shall cease by the end of 3 months from the date of this decision.

Application for costs

2. At the Hearing an application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Among other things, regulation 8 of the 2007 Regulations states that the local planning authority may serve a discontinuance notice if satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality. As paragraph 67 of the National Planning Policy Framework (NPPF) makes clear, advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative factors. This reflects the statutory provision in regulation 3, where it is stated that a local planning authority shall exercise its powers under the Regulations in the interests of amenity and public safety, taking into account (a) the provisions of the development plan, so far as it is material; and (b) any other material factors. In respect of the latter, these must be factors that are material to the interests of amenity and public safety. Where, as in the current case, advertisements are being displayed with deemed consent, a stricter test applies in respect of discontinuance action, namely whether substantial injury or a danger to members of the public, is being caused. It is for the Council to decide whether

such harm or danger is occurring. As in this case, their decision is challengeable at appeal.

4. Despite the statutory provisions, the appellants note the presumption in the NPPF in favour of sustainable development. They contend that in considering whether a discontinuance notice is necessary the Council's decision must be in accordance with the achievement of sustainable development, in respect of which the relevant considerations are those set out in paragraph 7 of the NPPF, along with the length of time the use of the site for the display of advertisements is likely to continue into the future.
5. As noted above, notwithstanding the overall intentions of the NPPF, the determining issues in advertisement applications and appeals are those that concern the interests of amenity and public safety. In taking discontinuance action it is implicit that this will involve financial loss to the advertiser (the definition of which in the Regulations includes the land owner). The amount of loss will be dependent on the particular circumstances relating to each display. The need for the advertisement and whether or not it contributes to a future sustainable development on the site are not factors that can carry weight in the determination of whether substantial injury to amenity, or danger to members of the public, is being caused. Neither is it material that the current display or use of the site for such displays with deemed consent is likely to be temporary.
6. The appellants have drawn attention to the fact that the site has been used for general advertising purposes for very many years, apparently without complaint by members of the public. (At the Hearing the Council referred to a complaint they had received about the current display but did not provide any evidence about this). The appellants also query why the Council are only now taking discontinuance action, particularly when they are aware that the existing display is temporary, given the anticipated start of redevelopment of the site within the next 18 months. For their part, the Council refer to a programme of discontinuance action within Camden, of which the appeal site forms part. Although the timing of the Council's action may be unfortunate for the appellants, the Council had a right to serve the notice at any time, provided they were satisfied that a substantial injury was occurring. Their action was part of an on-going programme of discontinuance action within the Borough. The longevity of the use of the site for the display of advertisements and the lack of any known objections to such use cannot carry weight in the decision on the appeals.

Main Issue

7. Having regard to the above, 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. In the event that it is, the secondary issue is whether the compliance period specified in the discontinuance notice is reasonable.

Reasons

Substantial Injury

8. The site is a vacant parcel of land between railway tracks. A planning permission for its development was recently submitted to the Council, on 25 January 2013. The site is currently screened on the road frontage. The existing advertisement unit on the site is an internally illuminated LED display,

in landscape format, measuring about 6m by 3m. It is a freestanding display, mounted on tall stanchions, to a height equivalent to second floor level of the adjacent three-storey terrace.

9. Whilst the display is freestanding, its very elevated position together with its fairly close proximity to the adjacent terrace has the effect of it appearing, in approaching views from the south, in association with the upper, non-commercial aspects of the adjacent terrace. Its size, landscape format and bold internal LED illumination result in it appearing as a highly dominant feature in the foreground to the otherwise neutral aspect of the plain brick southern flank wall of the mixed use terrace.
10. The changing alignment of the road at this point means that the site frontage is set forward of the building line of properties to the south along Finchley Road. As a result, the existing advertisement display, with its approximately right-angled presentation, is prominently exposed to long range views from this direction. It is accepted that Finchley Road has a strongly commercial character and includes some wholly commercial buildings, such as the nearby modern O2 shopping centre. However, the predominant building form is that of older traditional terraces with flats above or where the obvious commercial aspects are confined to street level, as in the case of the adjacent terrace.
11. The combination of the size, considerable height, bold illumination and exposed position of the existing advertisement display, presented to view at approximately right-angles to the road, results in the existing display appearing unduly assertive and intrusive in views from the south.
12. In view of the significantly harmful visual impact of the existing display, its continued presence and the use of the site for the display of advertisements with deemed consent would be substantially injurious to visual amenity.

The adequacy of the compliance period

13. The appellants consider the compliance period of 28 days is unreasonably short for 3 reasons:
 - It will do unnecessary financial harm to the landowners and may jeopardise the site development.
 - It will not allow sufficient time for Primesight to replace the loss of a key site to the company's business.
 - The use has by definition existed continually for in excess of ten years and it is therefore unreasonable not to allow it to remain for a further limited period.
14. The above concerns have very largely been considered, in relation to the appropriateness of the Council's decision to take discontinuance action, in the Preliminary Matters section above. However, in relation to the compliance period, the appellants draw attention to paragraph 82 of Circular 03/2007. This states that local planning authorities should always consider the particular circumstances and allow a reasonable time for discontinuing a display, or use of a site, especially when discontinuance action is likely to have serious financial consequences for a particular advertiser.
15. Reference is made to the considerable income obtained by the landowners from the existing display and the crucial role this plays in servicing a loan on interest

payments whilst the current planning application to develop the site is being taken forward. The appellants state that they require an 18 month compliance period to ensure that the proposed development is adequately financed and can go ahead, as anticipated, by then. As an absolute minimum they would reluctantly accept one year as an alternative.

16. In addition, Primesight refer to the financial significance to their company of the loss of the current LED display as part of a small number of strategically located, key advertisement sites in London.
17. Regulation 8(c) states that every discontinuance notice shall specify the period within which the display or the use of the site, as the case may be, is to be discontinued. Given that the discontinuance notice in this case concerns a use of land that, for the reasons set out above, involves substantial injury to visual amenity, it is imperative that the compliance period is not prolonged beyond what is absolutely necessary. In this respect, what is absolutely necessary is to provide a reasonable period in which to physically cease the use of the site for the display of advertisements with deemed consent by the permanent removal of the existing display unit. The reasons why the appellants seek an 18 month compliance period are noted. However, such a period would be tantamount to a grant of temporary express consent for a substantially harmful advertisement display. That would call into question the expediency of issuing the notice in the first place. The advice in paragraph 82 of Circular 03/2007 needs to be read in this context.
18. At the hearing Primesight stated that whilst it would be physically possible to cease the use within the 28 day period specified in the notice, they would incur additional costs in this particular respect to comply within this time period. Given the substantial size of the supporting structure, a period of 28 days does seem rather short to arrange for and complete the removal of the existing display. Instead an extended period of 3 months, to which the Council would not object, would provide a reasonable period to ensure compliance without any additional costs being incurred in the removal process.
19. For the above reasons, the appeal succeeds to this limited extent.

David Leeming

INSPECTOR

APPEARANCES

For the Appellants

David Cooper LLB(Hons), LARTPI – Solicitor, David Cooper & Co

Roger Hepher – Head of Planning, Savilles

Matt Swindles – Primesight Ltd

For the Council

Hannah Parker – Senior Planner, Appeals & Enforcement, Camden Council

William Bartlett – Legal Services Department, Camden Council

DOCUMENTS

Doc 1. A copy of the Pre-Hearing Statement by Primesight Ltd, with Appendices

Doc. 2 A copy of an advertisement appeal decision, dated 9 November 2001, relating to the appeal site (Ref: APP/X5210/H/01/1071546).