
Appeal Decision

Hearing and site visit held on 17 September 2013

by Clive Kirkbride BA(Hons) DipTP MSc MRTPI

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

Decision date: 4 October 2013

Appeal Ref: APP/X5210/H/13/2196672

New College Court, Finchley Road, London NW3 5EX

- 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 Clear Channel UK Ltd against discontinuance action by the Council of the London Borough of Camden.
 - The Council reference is EN11/0788. The Discontinuance Notice is dated 1 March 2013.
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Decision

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

Procedural matters

2. At the hearing the appellant raised concerns about the accuracy of the notice, claiming that the description of the site as set out in the First Schedule did not define precisely the site where the advertisement is being displayed.
3. The notice is addressed to the advertiser, the owner and occupier of the site which is given as "New College Court, Finchley Road, London NW3 5EX." The First Schedule describes the site as being "located on the north side of Finchley Road. The advertising panel is located on the east flank wall which overlooks Finchley Road." A plan attached to the notice shows New College Court edged in black. I am satisfied from the information contained in the notice that the appellant is in no doubt as to the precise location of the site being used for the display of advertisements, given also that the site has been used for the display of advertisements for over 10 years.
4. Part 5, Section 2 of the 2007 Regulations as amended relates to modifications of The Town and Country Planning Act 1990 in relation to discontinuance notices. It sets out the circumstances in which the Secretary of State may, amongst other matters, correct any defect, error or misdescriptions in the notice, provided that he is satisfied the correction will not cause injustice to the appellant or local planning authority. Having heard submissions from the parties relating to these matters, I am satisfied that I could correct the site description shown in the First Schedule to read as follows: "The east flank wall at 3rd to 5th floor level, New College Court, on the north side of Finchley Road" without causing any injustice. I have determined the appeal on this basis.

Main issue

5. I consider this to be whether or not the use of the site for the display of advertisements causes substantial harm to the amenity of the locality.

Reasons

6. New College Court is situated on Finchley Road, a busy traffic and bus route. This is one of the major routes in the borough where the Council is pro-actively targeting the removal of hoardings which are considered to cause substantial harm to amenity. In the last two years alone the Council has been successful in removing more than a dozen large hoardings in the borough including several along Finchley Road itself. Although this hoarding initiative is a material consideration, and the Council refers to a number of decisions, including appeal decisions, in support of its current action, assessing what amounts to substantial injury to amenity is a matter of judgment which will differ according to the circumstances of the case.
7. The appeal site is the east flank wall of New College Court which is only exposed between 3rd and 5th floor levels and is viewed predominantly from one direction, that is to traffic and pedestrians travelling in a generally northwards direction along Finchley Road. I understand that the appeal site is within the Finchley Road/Swiss Cottage town centre which is a protected shopping area. The area has a primarily retail function and character, notwithstanding the predominantly residential use of the upper floors of buildings along this part of Finchley Road, and has a vibrant streetscene which Council policies otherwise seek to protect. None of these matters is disputed by the Council.
8. When considering whether to serve a discontinuance notice local planning authorities are required to have regard to any material change in circumstances that has occurred. This part of Finchley Road has long had a busy vibrant character and the only change the Council refers to is that the advertisements displayed on the appeal site have been updated and upgraded, with the current display comprising a 48-sheet illuminated hoarding.
9. There is no question that the site is highly visible, principally by reason of its height above ground level, or that the advertisement displayed is large and visually prominent. However, it is mainly visible from one direction. The site is not within a conservation area, the building is not listed and the flank wall is blank having no architectural features which are obscured or cut across by its use for the display of advertisements.
10. Advertisements are not uncommon features on flank walls in urban areas where they can add colour, interest and information and complement their commercial surroundings. The appeal wall has been used for poster advertising for over 10 years without complaint and is an established part of the streetscene. The Council may have specific concerns about this particular hoarding, as generally evidenced by its written and oral submissions. However, the discontinuance notice is aimed at the use of the site, not the actual advertisement and it may be the case that a smaller advertisement sited lower down on the appeal wall would be acceptable. Such matters, however, are not before me in this appeal.
11. The Council has referred to its planning guidance and policies on advertisements, signs and hoardings. However, the guidance applies to

advertisements requiring express consent and Policy DP24 of the Council's Local Development Framework sets out the detailed approach to the design of new development. The Council also refers to, but provides little or no detail about, its hoarding initiative. However, paragraph 4.1 of its statement implies that the purpose of the initiative is to ensure that the design and siting of advertisements positively contribute to the appearance of the area and that the Council will seek to remove those hoardings which have a negative impact.

12. None of these matters amounts to evidence of unequivocal support for discontinuance action in this case. The appeal does not involve an application for consent and the test for taking discontinuance action is not whether the design and siting of advertisements makes a positive contribution to the appearance of an area, or even whether this would result in harm to amenity. The test in this appeal is the more rigorous one of whether the continued use of the appeal wall causes a substantial injury to amenity.
13. On balance, based on the evidence before me, I conclude that the use of the appeal wall for the display of advertisements does not cause substantial injury to the amenity of the locality. Therefore, the appeal succeeds and the discontinuance notice is quashed. In the circumstances, there is no need for me to correct the notice.

C.S. Kirkbride

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Koscién, BA(Hons) MCD The agent acting for the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Hannah Parker, MPlan Principal Planning Officer (Appeals and
Enforcement), Council of the London Borough of
Camden

DOCUMENTS

- 1 The appellant's statement with additional (final) comments and Appendices