

**Town and Country Planning Act 1990, s78**

**Appeal under Town and Country Planning (Control of Advertisements) (England) Regulations 2007**

**Schedule 4 by Moe Wurr, Goldschmidt and Howland Limited**

**LBC reference 2017/5628/A**

**PINS reference APP/X5210/H/30194410**

**Summary of Proof of Evidence of Ian Richard Trehearne**

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**Summary of Proof of Evidence of Ian Richard Trehearne**

I am Ian Richard Trehearne. I am a Chartered Town Planner and Member of the Royal Town Planning Institute, and am legally qualified. I have over 40 years' experience. During this time, I worked for local planning authorities in London, including the London Borough of Camden, and was for many years a partner and member of the Planning and Environment Department in a major law firm. I am now self-employed. I have wide experience in planning and advertisement control as well as in heritage matters, including conservation areas and listed buildings, and have given evidence at public inquiries.

I am familiar with the appeal site and its surrounds. Indeed, I have lived in NW3, which is some 2.5 miles away from the site, since 1973.

I was instructed in this matter in June 2017.

## **1. Site and Historic Environment.**

- 1.1. The site consists of the railway wall and triangular car park in front of it, located at the north end of Delancey Street, above the railway tunnel of the eastern part of the main Euston Line and formed by its angle with Delancey Street. The site is fronted by Delancey Street as it enters Parkway at the traffic lights. The appeal site is shown by the redline in the location plan submitted with the application for advertising consent shown at Appendix 1
- 1.2. The advertisement the subject of appeal is displayed on the railway wall.
- 1.3. North of the site is the junction with Parkway ,with a fairly complex pedestrian environment.
- 1.4. **Heritage Assets - Conservation Area.** The site lies just outside the Camden Town Conservation Area.
- 1.5. **Heritage Assets – Listed Buildings.** The listed buildings in the area are as follows
- 1.6. The wall is not listed or a part of a listed building.

Parkway Tunnel and Cutting	II
84 Delancey Street and railings	II GV
62-82 and 68A Delancey Street and railings	II GV
40-60 Delancey Street and attached railings	II GV
55-56 Mornington Terrace	II GV
53-54 Mornington Terrace	II GV
Edinboro Castle PH	II GV
58 Mornington Terrace	II GV

## **2. Background and History.**

- 2.1. On 15 October 1998 express consent was granted under reference AE9800649 to Parkways Estate Agents ('the 1998 Consent') for 'the display of painted advertisements on the single storey brick boundary wall'.
- 2.2. The consent was granted subject to a condition that '*the consent shall operate for a period of five years from the date of this decision notice,*' that is until 15 October 2003.
- 2.3. There was no condition which required the display of the advertisement to cease or the advertisement to be removed after that date.
- 2.4. The evidence of Michael Parry demonstrates that there have been advertisements on site since at least 2005. By May 2005 the advertisement was for 'Parkways'. In that month's auction by agents McHugh, the site was included under the description 'Car Park, Delancey Street' and the accompanying photograph shows advertising by Parkway covering the wall.

## **3. Application**

- 3.1. The application was made on 10 October 2017 under number 2017/5628/A for the site at Delancey Street

## **4. Refusal**

The decision to refuse consent was issued dated 8 December 2017

## **5. Appeal**

- 5.1 The appeal was lodged on 25 January 2018 on the following grounds:
  - 5.1.1 The advertising on the site has deemed consent as the result of having been displayed for over 10 years
  - 5.1.2 In the event that the advertising on the site does not benefit from deemed consent, it should be granted express consent

### 5.1.3 As to express consent:

5.1.3.1 It is agreed that the only relevant issue in dispute between the parties is the impact of the proposal on amenity and, in this context this means the effect on heritage assets close to the appeal site.

5.2 In addition, I believe that the appeal should be considered under Schedule 3 Class 14 of the 2007 Regulations.

## 6 Deemed Consent

### Class 13

6.1 Schedule 3 Class 13 of the 2007 Regulations deems consent for '*An advertisement displayed on a site that has been used continually for the preceding ten years for the display of advertisements without express consent*'.

6.2 The application for advertising consent was made on 10 October 2017. Accordingly, the relevant 10-year period in this case began on 10 October 2007.

6.3 The photographic evidence and Michael Parry's affidavit show that the advertisement has been displayed since at least May 2005

### Class 13 - exceptions

6.4 An advertisement does not fall within Class 13 if, during the relevant 10-year period, there has been either a material increase in the extent to which the site has been used for the display of advertisements or a material alteration in the manner in which it has been so used.

#### *Material increase in extent*

6.5 My opinion is that most people, looking at displays since May 2005 reasonably, fairly and applying common sense would agree that each advertisement covers the same broad area of the whole wall.

#### *Material alteration in the manner in which the site has been used for the display of advertisements*

6.6 In **Arthur Maiden Ltd v Lanark CC (No 2) (1958) JPL 422**, an advertisement painted directly onto a wall was replaced with a billboard. This was held not to be a material alteration and so did not negate the deemed consent.

#### Class 14

6.7 Schedule 3 Class 14 of the 2007 Regulations provides deemed consent for *an advertisement displayed after the expiry of express consent, unless—*a) *it would contravene a condition subject to which express consent was granted; or b) an application for renewal of consent has been refused.*

6.8 Class 14 is subject to conditions and the following is relevant: *(2) No advertisement may be displayed under this class except on a site which has been continually used for the purpose since the expiry of the express consent.* Quite plainly this condition has been met.

6.9 In my opinion the advertisement display also benefits from deemed consent pursuant both to Schedule 3 Class 13 and 14 of the 2007 Regulations.

### **7 Express Consent**

7.1 Regulation 3(1) of the 2007 Regulations provides that local planning authority shall exercise its powers in the interests of amenity and public safety. It is agreed that the issues to be considered here relate to amenity. Regulation 3(2)(a) provides that *factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest.*

7.2 I conclude that although the advertisement covers a substantial length of wall, it is set low down and does not dominate views around it. I conclude further that the material of which it is composed is not capable of being distinguished from the background wall until one is quite close. The history of the advertisement does not suggest that people in the past have seen it as 'visual clutter'.

### **9. Conclusions**

The following are borne out in evidence

1.1. There was a display on the wall prior to 1998

- 1.2. The consent of 1998 was subject to no express conditions about removal
- 1.3. The 1998 consent was begun and was certainly in position by May 2005 for Parkways
- 1.4. Parkways' display continued and was replaced by that of Oliver'sTown in 2011
- 1.5. In January 2017 this was replaced by the display of Goldschmidt and Howland
- 1.6. There is little if any difference between the Oliver'sTown display and that of Goldschmidt and Howland. Any difference is not material
- 1.7. There was little if any difference between the Parkways and Oliver's Town displays. Again any difference is not material.
- 1.8. All the heritage assets other than 84 Delancey Street were designated before 1989 and no 84 Delancey Street was in the process of being listed at that time.
- 1.9. The Council showed no interest in the display until early 2017

The Inspector is invited to conclude that the display has deemed consent under Classes 13 and 14, but failing this to conclude that there is no harm from the advertisement and that there is benefit achieved from the revenue it generates, which helps to support local business and to grant a consent for the advertisement to be retained.