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# Appeal Decision

Site visit made on 18 October 2011

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 21 October 2011**

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**Appeal Ref: APP/A1530/H/11/2149255**

**Land at Middlesborough, Colchester, Essex CO1 1QR**

- 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 relating to the use of a site for the display of advertisements with deemed consent.
  - The appeal is made by Mr Martin Stephens (JC Decaux UK Ltd) against discontinuance action by Colchester Borough Council.
  - The Council reference is 003041.
  - The Discontinuance Notice is dated 7 February 2011.
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## Decision

1. I dismiss the appeal. I direct that the Discontinuance Notice shall come back into effect immediately and that the use of the site for the display of advertisements with deemed consent shall cease within 21 days from the date of this decision.

## Main issue

2. The main issue is whether the continued use of the site for the display of advertisement display panels with deemed consent would be substantially injurious to amenity.

## Reasons

3. The advertisement site is located along a section of the Colchester Town Wall in Middleborough. The wall is recorded as a Scheduled Ancient Monument and is Listed Grade I on the statutory list of buildings of special architectural and historic interest. This part of the town wall also lies within the Colchester Conservation Area No 1 and on one of the major road access gateways into Colchester.

4. The test under Regulation 8 of the 2007 Advertisement Regulations requires that there must be 'substantial injury' to the amenity of the locality or a danger to members of the public. This is a stricter test rather than that for consideration of whether express consent should be granted for an advertisement. It is on the basis of this stricter test relating to the effect on the amenity of the locality that I have considered this appeal and acknowledge that the UDP policies are not the relevant starting point in relation to applications and appeals relating to advertisements. However, in relation to the effects on visual amenity, the aims and objectives of development plan policies, as well as any other national or local guidance on the placing of advertisements are material considerations. It is clear

that there is no danger caused to members of the public by the use of this site for advertisements and the appeal turns on the amenity issue.

5. The Council contends that the site and its advertisements severely and adversely affect the visual character of the historic wall and its setting. The physical proximity; the prominence and the scale of the four hoardings are considered to be visually incongruous and damaging to the significance of the wall. The Council confirms that the erection of the hoardings pre-dates the current legislation enacted in 1981 which would have required Scheduled Monument Approval, and which would be unlikely to be granted today. The Council's stance is supported by English Heritage and the Colchester Civic Society.

6. In support of the appeal it is contended that Regulation 8 of the Town and Country Planning (Control of Advertisements) Regulations 2007 is a draconian measure and intended to address the worst excesses of uncontrolled advertisement display. Reference is made to the stricter test relating to discontinuance action and that it imposes a much higher threshold whereby Local Planning Authorities (LPAs) must demonstrate that the continued display and use of sites is causing substantial injury to visual amenity. The history of advertising on the site is set out and Express Consent was granted in October 1954 (ref COL/B2/56) and the Appellant's land ownership equates to a 54m stretch adjacent to and including historic wall.

7. It is not accepted that the advertising use of the land causes substantial injury to local amenity and that the displays are not overly assertive or dominant. It is contended that the displays serve a function of screening from view an area of open parking which would still require screening if the advertisement use is discontinued. Notwithstanding the fact that it is considered that the notice be quashed it is suggested that lesser steps may be appropriate by a reduction in the number of signs and that, in any case, the period for compliance should be at least one year considering how long the site had been used for advertising purposes.

8. Having viewed the site and the existing advertisements from both near and distant viewpoints, I share the Council's concerns about the visual impact that they have on the setting and features of the historic town wall. In my view, due to the sensitive nature of the scheduled monument I consider that the injury to visual amenity is substantial. The wall lies adjacent to a section of highway that is a major gateway into Colchester and the authority has carried out other improvement works in this part of Middlesbrough in an attempt to make this an attractive entrance to the town. The four hoardings with sections of fencing in between are perceived as most discordant and visually harmful elements within the street scene.

9. I acknowledge that the site has been used for advertising for over 50 years. However, current national policy relating to the protection of our heritage (Planning Policy Statement 5: Planning for the Historic Environment –PPS5) states, amongst other things, that LPAs should weigh the benefits of development against the harm to an asset's significance including its setting. PPS5 also obliges LPAs to identify opportunities for change in the settings of assets where the changes would enhance or better reveal their significance.

10. I consider that this is such a case and an opportunity, (irrespective of how long it has been delayed by the Council), to remedy the significant visual harm caused by the use of the site for advertisement purposes. Relevant development plan policies reinforce the aims and objectives of protecting heritage assets and ensuring that any development including the use of sites for advertising are not injurious to the visual amenities of a locality. In any case, the Council could have taken discontinuance action earlier than they did.

11. In reaching my decision, I have taken into account all other matters raised by the Appellant. These include the full site history; the fact that the use was created by express consent and is not illegal advertising; the longevity and extent of the use; the references to the limited grounds for compensation and the fact that the panels are actually on land above the wall. However, none of these factors carries sufficient weight to alter my conclusions and nor is any other matter of such significance so as to change my decision. I do not consider that this case merits any extension of the compliance period and this will remain as set out in the notice. Nor do I consider that a reduction in the number of hoardings would mitigate the significant injurious harm to amenity.

### **Conclusion**

12. In view of the significant adverse impact of the advertisements on this site, I consider it appropriate to reinvest effective control over the display of advertisements here, with the Council. I conclude that the continued display of these or any other large advertisement on this particular site would be substantially injurious to amenity. The appeal fails and the notice is upheld.

*Anthony J Wharton*

Inspector