



PLANNING INSPECTORATE GOOD PRACTICE ADVICE NOTE 17

Advertisement appeals and related issues - England

Introduction

1. This Good Practice Advice Note provides guidance and advice about advertisement appeals and appeals against discontinuance notices. This note is no substitute for reading the Act, Statutory Instruments (SIs) and guidance documents, which are outlined below.

Legislation, policy and guidance

2. Although linked to the general planning rules via Section 222 of the Town and Country Planning Act 1990, advertisement consent has its own set of rules and regulations. Section 220 of the Town and Country Planning Act 1990 sets out the basis for the Regulations.

3. Advertisement appeals in England are controlled by SI 783/2007: Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Minor amendments were made in SI 1739/2007. The regulations were amended by SI 2057/2011 The Town and Country Planning (Control of Advertisements) (England) (Amendment) Regulations 2011.

4. The Regulations are accompanied by DCLG Circular 03/2007 Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Minor corrections to the Circular were made in July 2007.

5. Planning Policy Guidance 19 Outdoor Advertisement Control is extant although the Annex (criteria for deciding applications and appeals involving poster-sites) has been replaced by Appendix E to Annex to Circular 03/2007.

6. Advertisement hearings take place under the Town and Country Planning Appeals (Inquiries Procedure) Rules 1974 [SI 1974 No 419]. The conduct of the hearing is at the discretion of the Inspector who may, if the occasion warrants, permit cross-examination, as in the case of an inquiry. Unlike other types of hearings, advert hearings are generally closed in the room rather than on site. Although appellants are encouraged to submit statements in advance there is no requirement, unlike that placed on the local planning authority, for them to do so.

7. The Department for Communities and Local Government produced the guidance 'Outdoor advertisements and signs: a guide for advertisers', June 2007.

8. When a local planning authority issue their decision on an application for consent to display an advertisement or issue a discontinuance notice they should include the Appendix C to Annex to Communities and Local Government Circular 03/2007 "Notes for guidance about advertisement appeals". The Planning

Inspectorate has asked local planning authorities to ensure that they amend paragraph 2 to refer to the Department for Communities and Local Government subsequent Circular 03/2009, Costs awards in appeals and other planning proceedings. They should also indicate that an award of costs may also be made for appeals proceeding by written representations.

Advertisement appeals

9. An applicant may appeal against the decision of the local planning authority to:-

- refuse consent for the advertisement(s) shown on the application form;
- grant consent for the advertisement(s) subject to conditions to which you object;
- serve a discontinuance notice;

or

- against the failure of the local planning authority to give notice of its decision with the appropriate period (usually 8 weeks) of an application for consent.

10. Your appeal and essential supporting documents must reach the Planning Inspectorate:-

- within 8 weeks of the date you receive the local planning authority's decision notice; or
- for non-determination ('failure') appeals, within 8 weeks of the date by which the local planning authority should have decided the application; or
- if the local planning authority have sent you a discontinuance notice, before the date that the notice will come into effect. This date is given in the notice.

If we do not receive your appeal and documents within this time limit, we will not accept your appeal¹.

11. The local planning authority should decide your application within 8 weeks of the date they accepted it as valid. If you have agreed with the local planning authority, in writing, a period longer than the 8 weeks, but they have failed to decide your application within that period we must receive your appeal within 8 weeks of the end of that extended period.

12. Your appeal should be made only when all else has failed. You should have been discussing your proposed advertisement with the local planning authority during the course of your application for advertisement consent. If you think that making changes to your proposal could resolve the local planning authority's reasons for refusal, you should discuss these with the local planning

¹ We will consider accepting late appeals where there are exceptional circumstances for late submission. Reasons for late submission should be stated at the time of submission.

authority before appealing to us. A further application to the local planning authority may be your best route.

13. If you are making an advertisement appeal you should read the ["How to complete your advertisement appeal form"](#). If you wish to take part in someone else's appeal you should read the ['Guide to taking part in advertisement appeals – England'](#) on the Planning Portal. The appellant and the local planning authority should follow the guidance in the Planning Inspectorate's [Good Practice Advice Note 07 – "Nature and content of documents"](#) when preparing their grounds of appeal and appeal statement.

Grounds of appeal

14. The appeal form should provide full grounds of appeal and should be accompanied by the relevant documents. If the appeal is against the local planning authority's failure to decide an application it is helpful if you provide reasons why you feel the application should be granted.

Local planning authority's appeal statement

15. When preparing their appeal statement the local planning authority should ensure that they also provide the specific information requested in the appeal "starting letter" and the Essential Supporting Information form. Local planning authorities should submit their statement within 3 weeks of the starting date for appeals proceeding by written representations and no later than 4 weeks before the date of the hearing for those cases.

16. Statements should be concise and concentrate on the two issues of amenity (character and appearance, including aural and visual) and safety.

Conditions

17. There is no need to suggest the standard conditions, which apply to all consents. These can be found at Schedule 2 of the 2007 Regulations and are discussed at paragraph 14 of the Annex to 03/2007.

18. All consents are automatically granted for five years, unless specifically stated (Regulation 14(7)), therefore a time-limited condition need only be suggested where a period other than five years is thought necessary. Class 14 of Schedule 3 of the Regulations grants, with certain restrictions, deemed consent after the expiration of express consent provided there is no condition which requires the removal of the advertisement following expiry of the express consent.

19. Suggested conditions for a hoarding or general advertisement should seldom, if ever, seek to control content. However, conditions can control size or colour etc in relation to a specific advertisement, if required for the purposes of amenity or public safety. Any suggestions for such conditions should be justified.

20. When suggesting a condition relating to illumination of advertisements it is useful to refer to 'Technical Report No 5: Brightness of Illuminated Advertisements' by the Institution of Lighting Engineers. The latest version is

the 3rd edition dated 2001². Paragraph 11.3 of the Technical Report contains a suggested condition relating to intensity of illumination.

Advertisements in special areas

21. If the appeal site is in an Area of Special Control of Advertisements (ASCA), conservation area, or Area of Outstanding Natural Beauty (AONB) local planning authority statements should include maps outlining the boundaries of such areas. In relation to a site in an ASCA the information could be crucial to the handling of the appeal and may affect whether consent can be granted. The Planning Inspectorate does not hold information on ASCAs and we rely on the local planning authority to clearly state where this applies.

22. The specific duty in Section 72 of the Planning (Listed Building and Conservations Areas) Act 1990 applies where a site is in a conservation area. However, that in Section 66 regarding listed buildings does not apply, except where enforcement action is involved. Listed building consent as well as advertisement consent is normally required for advertisements attached to listed buildings, because the attachment generally comprises an alteration to the listed building affecting its character as a building of special architectural or historic interest. Where a listed building is involved the listed building description should be included in the local planning authority's statement.

Deemed consent

23. Part 2 and Schedule 3 of the 2007 Regulations grant deemed consent for certain advertisements, therefore negating the need for specific, 'express', consent. The classes of deemed consent are explained more fully at paragraphs 15-74 of the Annex to 03/2007.

24. The Court, in *Thomas v National Assembly for Wales & Neath Port Talbot County Borough Council* [2009] 1734 (Admin), has held that if an applicant for express consent specifically raises the issue of whether deemed consent already exists thereby making an express consent unnecessary the Inspector (or local planning authority at application stage) should consider whether that is the case.³ There is no requirement for this consideration where the request has not been expressly made.

Discontinuance notice appeals

25. A discontinuance notice can be issued against an advertisement displayed with deemed consent. It is a formal document that, once it takes effect, can result in conviction for non-compliance.

26. Discontinuance action cannot be taken against advertisements that have express consent, are exempt from the need for consent or are unlawful.

² As the Report is from 2001 it refers to the 1992 Regulations.

³ This is a Welsh case and so considered the 1992 Regulations, which still apply in Wales, although as no provision for determining deemed consent was added to the 2007 Regulations it is considered that it also applies in England.

Contents of the notice

27. Where a discontinuance notice is served requiring the discontinuance of the use of a particular site for the display of advertisements with deemed consent to cease (for example, a flank wall on which a poster panel is displayed), the definition of the site should not be so wide as to include within its scope any part where there are advertisements that the local planning authority is not seeking to remove.

28. The notice must give at least eight weeks for it to come into effect from the date of service of the notice. Although there is no requirement that a notice shall contain any statement of the right of appeal against it, local planning authorities are expected, as a matter of good practice, to alert the recipients to their right of appeal – see paragraph 8.

Statement of reasons

29. The local planning authority's statement of reasons accompanying the notice must back up why a particular display or use of a site for the display of advertisements with deemed consent is considered to cause substantial injury and should clearly differentiate as to whether it is the use of the site that is unacceptable or a specific advert (Regulation 8(1); Appendix F to Annex to Circular 03/2007).

30. Specific and convincing reasons are needed for each notice. If the notice relates to a use of a site, the statement should give reasons why the use, as opposed to any existing display, should cease. Care should be taken to ensure that the definition of the site and any plan attached to the notice is precise and does not include any part of a building or land on which other advertisements are displayed with deemed consent which are not the intended target of the notice.

31. The local planning authority should state whether the discontinuance notice is part of a wider campaign and if not why action has been taken against this particular site/advert; this is particularly useful where the appellant has referred to other advertisements in the area which, in their view, have a comparable impact to the appeal display/site.

Other matters

32. Regulation 7 Directions

A local planning authority may ask the Secretary of State to make a direction that the display of advertisements within one of the deemed consent classes in Schedule 3, other than Class 12 or 13, may not be displayed within an area without express consent having been first obtained. Local planning authorities should contact the Secretary of State for Communities and Local Government at

Department for Communities and Local Government
Planning-Development Control
Zone 1/J3 Eland House
Bressenden Place
London
SW1E 5DU.

33. Areas of Special Control of Advertisements (ASCA)

If local planning authorities want to create an area of special control of advertisements they should apply to the Secretary of State for Communities and Local Government (at the address given above) for approval of an order.

Local planning authorities are reminded that where an order is in force they have a duty, under regulation 20(4), to consider at least once in every 5 years, whether it should be revoked or modified.

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