Advertisements

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Responsibility of	**Subject Lead for Advert**
Review change: Update refers to caselaw which clarifies that living conditions of nearby occupiers can be considered under 'amenity' in the advert regulations (paragraphs 19 & 20).	

Key legislation and policy

Legislation	• Town and Country Planning Act 1990 • Well Being of Future Generations (Wales) Act 2015 • The Town and Country Planning (Control of Advertisements) Regulations 1992 • The Town and Country Planning (Control of Advertisements) (Amendment) Regulations 1994 • The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2017 • The Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017
National policy and guidance	• WG Circular 016/2014 'The Use of Planning Conditions for Development Management • Development Management Manual – section 16 • Planning Policy Wales • Technical Advice Notes 7: Outdoor Advertisement Control • Technical Advice Note 24: The Historic Environment
Judgments	• *BC of Calderdale v SoSHCLG & Clear Channel UK* [2021] EWHC 695 Admin • Retail Media Ltd v SSETR & Macclesfield BC [2000] EWHC Admin 398 • R. (on the application of Clear Channel UK Ltd) v First Secretary of State, R (on the application of Clear Channel UK Ltd) v Islington LDC [2004] EWHC 2483 • Thomas v NAW & Neath Port Talbot [2009] EWHC 1734 (Admin) • Westminster City Council v Moran [1998] EWHC Admin 637 • R (oao) Clear Channel UK Ltd v Hammersmith & Fulham LBC [2009] EWCA Civ 2142 • O'Brien v Secretary of State and Doncaster MBC [2001] JPL 375, • Joyner v Guildford Corporation (1954) 5 P&CR 30)

	• King Media Ltd v Secretary of State for Housing, Communities and another [2026] EWHC 2406 (Admin)
Other guidance	• Outdoor advertisements and signs: a guide for advertisers, June 2007 (DCLG) – although written for England provides detailed examples of types of advertisements and signs subject to control.

Introduction

1. This chapter is concerned with the control of advertisements. It considers relevant legislation and policy and the key aspects to take into account in determining appeals in respect of advertisement consent.

2. The display of advertisements is controlled through a specific approval process and separate planning permission is not required in addition to advertisement consent. Although advertisement consent grants permission for the structure, planning permission for a structure does not grant consent for any advertisement. When planning permission is sought for a structure the effect a likely advertisement would have on amenity may be considered as part of the balancing exercise.

3. The general approach to dealing with advertisement cases is similar to the process of dealing with planning appeals but with two important differences:
   - The display of outdoor advertisements can only be controlled in the interests of amenity and public safety; and
   - It is accepted anyone proposing to display an advertisement needs that advertisement in that particular location, whether for commercial or other reasons, except in Areas of Special Control where an applicant needs to show a reasonable requirement for an advertisement.

4. However, the control regime does not allow the regulation of the subject matter of the advertisement. Furthermore, all types of advertisements are subject to standard conditions[1].

Legislation, policy and guidance

5. Section 220 of the Town and Country Planning Act 1990 sets out the legal basis for the restriction and regulation of the display of advertisements. According to section 336 advertisement means '*any word, letter, model sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, and employed wholly or partly for the purpose of advertisement, announcement or direction and includes any hoarding or similar structure used or designed, or adapted for use and anything else principally used or designed or adapted principally for use for the display of advertisements*'.

6. The display of advertisements is regulated by The Town and Country Planning (Control of Advertisements) Regulations 1992 (SI 1992/666). Guidance on the operation of the advertisement regulations is set out in Welsh Office Circular 14/92: Town and Country Planning (Control of Advertisements) Regulations 1992. This guidance is supplemented by Welsh Office Circular 70/94: The Town and Country Planning (Control of Advertisements) (Amendment) Regulations 1994. As of May 2017 parts of Circular 14/92 have been cancelled.

[1] Set out in Schedule 1 of The Town and Country Planning (Control of Advertisements) Regulations 1992

7. Further guidance is also found in TAN 7. However, this is now dated and does not consider the more technically advanced types of advertisement now found in widespread use.

8. Under the Regulations there are 3 types of advertisements:

Exempt from control (Regulation 3(2)) – are those classes of advertisements which can be displayed without needing express or deemed consent provided they comply with any conditions and limitations specified in Schedule 2 and with all the standard conditions[2]. Examples of such advertisements include those on enclosed land and moving vehicles.

Deemed consent (Regulation 6) – these can be displayed without needing express consent and are set out in Schedule 3[3] (for example, functional advertisements by public bodies, miscellaneous advertisements on any premises, temporary signs). Each of the classes of advertisements in Schedule 3 are subject to conditions and limitations (mainly relating to matters of size, height, illumination).

Express consent (Regulation 9) – all other applications require express consent through an application to the LPA.

Procedure

9. Regulation 15 confirms the right of appeal under Section 78 of the 1990 Act where the LPA has refused express consent, or failed to determine the application, or against a condition imposed by the LPA.

10. Under the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 appeals relating to advertisement consent fall within the same category as householder and minor commercial appeals[4]. They are generally dealt with on a written representation basis following the procedures set out in Part 3 of the Regulations unless the Welsh Ministers find this procedure to be unsuitable. This may be evident at the beginning of or come to light during the appeal process. In such instances the appeal will proceed under Part 4, 5 or 6 on the basis of written representations, hearing, inquiry or a combination of these procedures.

11. Most cases will be suitable for the written representations procedure and as most advertisements are intended to be visible from a public place, the site visit will usually be unaccompanied. Only a minority are dealt with by means of a hearing or inquiry. Further advice can be found in the relevant chapters on Householder, Advertisement and Minor Commercial Appeals, Hearings and Inquiries.

[2] Except in Class G where standard condition 4 does not apply
[3] As amended by The Town and Country Planning (Control of Advertisements) (Amendment) Regulations 1994.
[4] Further guidance can be found in the chapter - Householder, Advertisement Consent and Minor Commercial Appeals

12. The parties can submit a claim for costs. The procedure and approach is set out in Section 12 Annex: Award of Costs of the Development Management Manual.

Appeals relating to express consent

13. Casework most commonly involves fascia and projecting signs on shops and commercial premises, poster panels, free standing display units, totem signs and large PVC sheets wrapped around buildings. Some commonly used terms which derive from the historic size of a standard poster sheet include:

    4 sheet (1.5m x 1m) and 6 sheet (1.9m x 1.3m) – a small format typically seen on the forecourt of shops and in shopping centres/parades, usually in the form of a freestanding display unit or attached to a building or structure.

    48 sheet (3m x 6 m) 48 sheet (3 x 6m) – the standard size poster panel for the industry, often attached to buildings but also freestanding.

    96 sheet (3m x 12m) – twice the size of 48 sheets, usually free standing.

    Scrolling posters – usually 48 sheet in size, previously a mechanical rotation typically of 3 advertisements in sequence but often now by means of a light emitting diode (LED) display.

    PVC sheets/shrouds/wraps – often wrapped around scaffolding to buildings or hung on the elevation of a building so can often be very large (e.g. the same size as the building).

14. The assessment of advertisement appeals is confined to the issues of **amenity** and **public safety**:

    Regulation 4(1) – "A local planning authority shall exercise their powers under these Regulations only in the interests of amenity and public safety, taking into account of any material factors, and in particular:

    (a) in the case of amenity, the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest, disregarding, if they think fit, any advertisement being displayed there;

    (b) in the case of public safety-
    (i) the safety of any person who may use any road, railway, waterway, dock, harbour or aerodrome;
    (ii) whether any display of advertisements is likely to obscure or hinder the ready interpretation of any road traffic sign, railway signal or aid to navigation by water or air.

    Where one of the issues (amenity or public safety) is agreed between the parties and is not a reason for refusal of the application, it should still be expressly mentioned and dealt with in your decision. In the judgment *BC of Calderdale v SoSHCLG & Clear Channel UK* [2021] EWHC 695 Admin, the judge observed that the Inspector did not mention whether or not public

safety was an issue. While the decision did not fall on this point, it was a contributing factor.

The effect on amenity

15. The test in considering the impact of an advertisement on amenity is whether it would adversely affect the appearance of the building or the immediate neighbourhood where it is to be displayed. The local characteristics of the area should therefore be considered, including its scenic, historic, architectural or cultural features and whether the advertisement would be in scale or keeping with these features. As assessment of these factors may appear to involve some subjective judgement it may be necessary to show a degree of consistency in the assessment of visual impact in similar or comparable neighbourhoods.

16. TAN 7 recognises that businesses located in the countryside expect to be able to advertise their whereabouts, especially to visitors. Nevertheless it requires care to be taken to ensure that signs are designed and sited to harmonise with their setting, and that a proliferation of individually acceptable advertisements does not spoil the appearance of the open countryside. Wherever practicable TAN 7 expects businesses in the same general location, or in by-passed communities, to be encouraged to combine their essential advertising needs in order to avoid a proliferation of advance signs.

17. Although not specifically referred to in the Regulations, amenity can include aural amenity. Concerns about aural amenity do not occur very often. However, there may occasionally be concerns about potential noise disturbance from advertisements with moving motorised parts or the flapping of a flag displayed close to residential windows. Therefore, if the advertisement makes a noise it may be necessary to have regard to aural amenity.

18. Guidance on the assessment of large poster hoardings is given in the Annex to TAN 7.

19. The recent judgement *King Media Ltd v Secretary of State for Housing, Communities and another* [2026] EWHC 2406 (Admin) accepts that the "*amenity of the locality*" in regulation 8(1) can include residential amenity, whether of people in buildings nearby, or directly impacted by the advertisement. It continues to note 'that "*Amenity"* in regulation 2 includes *"aural and visual amenity"*, but specifically uses the word "*includes*", thus making it clear that other forms of amenity may arise and be relevant in the determination.'

20. The judgement does highlight in that case the Inspector made it clear that the decision would have been the same regardless of the conclusion on residential amenity, nevertheless, it was a relevant consideration.

The effect on highway safety

21. All advertisements are intended to attract attention but proposed advertisements at points where drivers need to take more care are more likely to affect public safety, for example at junctions, roundabouts, pedestrian crossings, on the approach to a low bridge or level crossing or other places where local conditions present traffic hazards. When considering public safety factors TAN 7 expects the LPA to consult other relevant organisations with an interest, such as the highway authority.

22. In assessing an advertisement's impact on public safety regard needs to be given to its effect on the safe use and operation of any form of traffic or transport on land (including the safety of pedestrians), on or over water, and in the air, including the likely behaviour of vehicle drivers who will see the advertisement, possible confusion with any traffic sign or other signal, and possible interference with a navigation light or beacon.

23. The test in considering an advertisement's impact on highway safety is therefore whether the advertisement itself or the exact location proposed for its display is likely to be so distracting or confusing that it would create a hazard to or endanger people in the vicinity who are taking reasonable care of their own and others safety. Whilst not applicable in Wales, the England Planning Practice Guidance on advertisements provides examples of the main types of advertisements which may constitute a danger to public safety.

Other matters to be taken into account

24. Issues which are not related to amenity or public safety may be raised by the parties. For example, it may be argued that there is (or is not) a need for the advertisement, or that it would have economic benefits and would represent sustainable development in line with national policy. Concerns might be expressed about the content of the specific advertisement.

25. However, advertisements should be subject to control only in the interests of amenity and public safety. There is no indication in the Regulations or national policy and guidance that any other factors can be taken into account either for, or against, a proposal.

26. However, the sole main issue in an advertisement appeal decision in 2018 (APP/M6825/H/18/3202863) was the effect of a sign on the Welsh language. It considered planning policy promoting bilingual signs against the limitations set out in the Control of Advertisement Regulations 1992 which identifies amenity and public safety as the only considerations that may be taken into account in the determination of an application for advertisement consent. Mindful of the duty imposed by the WBFG Act to promote the Welsh language, the appeal was dismissed.

Existing advertisements in the area

27. Existing advertisements may be taken into account where it is considered they form part of the character of the area against which the impact on amenity is being assessed.

28. Although the decision maker has the power under Regulation 4(1)(a) to disregard, if they think fit, any advertisement that is being displayed in the locality, this should be used with caution. It is important that clear reasons are given why it is considered appropriate to disregard any other signs.

29. The judgment in *Retail Media Ltd v SSETR & Macclesfield BC* [2000] EWHC Admin 398 emphasised the need for adequate reasoning in decisions where existing advertisements have been disregarded. The aim is to achieve a consistency of approach in reasoning, whilst recognising that the resulting conclusions and decisions must always turn on the merits of the case. Where existing advertisements in the same locality as the appeal site are referred to by one or more of the parties and consistency is a major plank of the appellant's case, those advertisements and the question of consistency must be referred to in the decision. Points to consider include:
    - Is the LPA aware of the legality of the other signs and is it taking steps to do anything about them?
    - Is it clear what the similarities or differences between the appeal sign and those that are to be disregarded are?
    - Can the necessity of formally disregarding any signs be avoided, by acknowledging the other signs but making it clear they do not set a precedent, then explaining that the appeal has been dealt with on its own merits and it has been found to be harmful or acceptable for its own specific reasons? Even if nearby signs are very similar in impact, the effect of cumulative harm or the overloading of an area can both be arguments used to avoid the need to disregard signs.

Advertisements in Conservation Areas

30. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of "*preserving or enhancing the character or appearance"* of a conservation area. Section 72 applies to the exercise of any functions under the planning acts and the Court has held that a determination under the Regulations is an exercise of a function under the 1990 Planning Act[5]. Therefore, the statutory duty applies in advertisement appeals in so far as it relates to the consideration of amenity.

31. One of the purposes of the advertisement control system is to encourage the display of outdoor advertisements which make a positive contribution to the appearance of the environment. It is therefore reasonable to expect that the duty to pay special attention to the desirability of preserving or enhancing the character of a conservation area will result in more exacting standards when a proposal in such an area is under consideration. PPW makes a strong presumption "*against the granting of planning permission for developments,*

[5] *R. (on the application of Clear Channel UK Ltd) v First Secretary of State, R (on the application of Clear Channel UK Ltd) v Islington LDC* [2004] EWHC 2483

including advertisements, which damage the character or appearance of a conservation area or its setting to an unacceptable level." [6]

32. Many conservation areas include retail and commercial premises ranging from small corner shops to thriving commercial centres. Outdoor advertising is essential to commercial activity and the success of local businesses will usually help owners and tenants of commercial premises to maintain buildings in good repair and attractive in appearance. As a consequence TAN 24 encourages the adoption of a flexible approach in the use of the powers available in the control of advertisements[7].

Listed Buildings, Ancient Monuments and other Heritage Assets

33. The statutory duty under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring decision makers to have special regard to preserving the listed building or its setting or any features of special architectural or historic interest does not extend to the consideration of whether to grant advertisement consent.

34. However, the presence of a listed building or scheduled monument is likely to be a relevant material consideration when assessing the effect on amenity (for example, in terms of its appearance, features and setting).[8] Furthermore, paragraph 6.17 of PPW stresses the importance of the need for the planning system to protect, conserve and enhance the significance of heritage assets. This includes the consideration of the setting of an historic asset which might extend beyond its curtilage. Any change that impacts on an historic asset or its setting should be managed in a sensitive and sustainable way.

35. Almost all advertisements on listed buildings or scheduled monuments will constitute an alteration to the building or the monument and, therefore, will require listed building or scheduled monument consent in addition to any advertisement consent. Any decisions made through the planning system must fully consider the impact on the historic environment and on the significance and heritage values of individual historic assets and their contribution to the character of place. Further guidance is contained in the chapter of the manual on Historic Environment.

Designated Areas and Areas of Special Control of Advertisements

36. In National Parks, Areas of Outstanding Natural Beauty and conservation areas, stricter controls usually apply to the advertisements which can be displayed with deemed consent. The limitations specified in Schedule 3 prohibit several classes of advertisements in designated areas under deemed consent. Applications for express consent also need to be closely scrutinised to ensure that the proposals do not compromise the aims of an area's designation.

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[6] PPW edition 10 section 6.1.15
[7] Paragraphs 6.8 and 6.9
[8] See Regulation 4(1)(a) - factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest.

37. An LPA has the power under Regulation 18 to designate Areas of Special Control for Advertisements (ASCA) in the interests of amenity but not public safety within the meaning of Regulation 4(1). These place additional restrictions on the display of advertisements. In an ASCA some advertisements that would otherwise benefit from deemed consent will require express consent (for example advertisements on balloons, illuminated advertisements and hoardings)[9].

38. Regulation 19(2)(b) requires that in an ASCA a directional sign[10] must be "reasonably required". It is necessary to assess whether this is so, particularly if the proposal is considered to be acceptable in terms of its effects on amenity and public safety.

39. However, in most cases the presence of the ASCA will have little bearing on the assessment of the proposal, which should be considered on its merits in respect of the effects on amenity and public safety. Notwithstanding this, it is good practice to acknowledge that the site is within an ASCA.

Development Plan Policies

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 does not apply to advertisement appeals. Instead, the starting point is the effect on amenity and/or public safety (rather than whether the proposal accords with the development plan). Unlike England where the Regulations state that account is to be taken of '*the provisions of the development plan, so far as they are material*' no such statement is made in Regulation 4(1) in respect of Wales.

41. TAN 7 expects development plans to give clear guidance to prospective advertisers on the likely acceptability of their proposals and provide a basis for rational and consistent decisions on advertisement applications. Even though advertisement control policies or design guidance may have been formulated having regard to amenity and public safety, references to these policies and guidance cannot by themselves be the decisive factor in determining whether an advertisement is to be permitted. It will always be necessary to assess the specific amenity and public safety merits of the proposed advertisement in relation to the particular site.

42. In its reasons for refusing advertisement consent an LPA will often cite development plan policies and any supplementary guidance which it considers relevant to the case. It is necessary to show that these have been taken into account but are not decisive to the decision reached on the appeal. For example, in a straightforward case, the matter could be addressed as follows:

    "*The Council has referred to policy [] of the [Local Plan] which it considers to be relevant to this appeal. I have taken it into account as a material consideration. However, the powers under the Regulations to control advertisements may be exercised only in the interests of amenity and public safety, taking account of any material factors. In determining the appeal the Council's policy has not, by itself, been decisive*".

[9] Regulation 19 Class A of Schedule 2 and Classes 4 and 8 of Schedule 3

[10] Regulation 19 (2)(b) refers to any advertisement "for the purpose of announcement or direction in relation to buildings or other land in the locality"

Writing decisions

43. The format of the decision and the approach to writing it should generally be the same as other planning appeals, including in terms of defining main issues, reasoning, conditions and conclusions. However, there are some differences and an explanation of the differences and the approach taken may be needed where relevant.

44. The regime for regulating advertisements is separate from that of planning. Consequently the banner heading on the decision letter should read:
    The appeal is made under Regulation 15 of the Town and Country Planning (Control of Advertisements) Regulations 1992 against a refusal to grant express consent[11].

Standard Conditions

45. Under Regulation 13(a) all advertisements which are granted express consent are subject to the five standard conditions set out in Schedule 1 of the Regulations. It is not necessary to set these out as separate conditions. However, in order to draw them to the attention of the appellant, the formal decision should state:
    The appeal is allowed and express consent is granted for the display of [insert description of advertisement] as applied for. The consent is for [five] years from the date of this decision and is ***subject to the five standard conditions set out in the Regulations*** *(and the following additional condition(s): [insert any non-standard conditions])*.

Additional Conditions

46. The Regulations also provide for the grant of consent subject to such additional conditions considered necessary. Use of this power could allow a proposed advertisement which might otherwise have been refused. Any additional non-standard conditions must be set out in full and should be supported by specific and relevant planning reasons. Further guidance and model conditions relating to advertisements are set out in Circular WGC 016/2014 The use of planning conditions for development management.

47. Under Regulation 13(5)(b) all consents are automatically given for five years, unless specifically stated otherwise. Therefore, if it is considered that the consent should be for 5 years, there is no need to impose a specific condition. However, it is good practice to refer to this period in the formal decision as follows:
    The appeal is allowed and express consent is granted for the display of [insert description of advertisement] as applied for. ***The consent is for five years from the date of this decision*** *and is subject to the five standard conditions set out in the Regulations (and the following additional condition(s): [insert any non-standard conditions*]).

[11] Appeals may also be made where the LPA granted express consent subject to conditions, and where that authority neither gave notice of their decision nor gave a notice under s70A to decline to determine the application within 8 weeks from receipt of the application.

48. If the appellant has applied for a period of consent of less than 5 years then it should be made clear that the consent is only for the period sought, even if there is no evidence to indicate that a longer period would not be appropriate or that the shorter period sought is necessary.

49. After 5 years (or whatever period is specified) the advertisement may continue to be lawfully displayed as it will have the benefit of deemed consent under Class 14 of Schedule 3 of the Regulations. An advertisement with deemed consent can only be removed if discontinuance action is taken by the LPA.

50. However, an advertisement will not benefit from deemed consent under Class 14 if it would contravene a condition which has been imposed on an express consent (Class 14(a)). Consequently, if it is considered that an advertisement would be likely to be unacceptable at the end of the 5 year period (or any other period considered relevant) it will be necessary to impose a non-standard condition requiring that it is removed from the site at the end of that period[12]. This should only be done on the basis of firm evidence to indicate that the advertisement would be likely to be unacceptable at the end of the specified period. There must be convincing reasons why might this be so.

51. A condition requiring the removal of an advertisement is more likely to be necessary in circumstances where it is considered that a consent of less than 5 years is justified (as, presumably, the conclusion has been reached that the advertisement is unlikely to be acceptable after the relevant time period imposed).

52. In some instances where consent is granted for an advertisement hoarding it may be considered necessary to use landscaping to mitigate its appearance and an appropriate condition should be attached[13].

53. Conditions can also be used to control the level and times of illumination of signage. Model condition 13 specifies the times of illumination whereas model condition 16 restricts the intensity of the illumination[14]. Whilst the latter seeks to specify the candela, if a figure is not mentioned in the evidence or there is dispute between the parties, guidance on the maximum recommended luminance can be found in *Professional Lighting Guide PLG05 The Brightness of Illuminated Advertisements, 2014 by the Institute of Lighting Professionals*. A condition limiting the number of lights is contained in the model conditions.

54. A condition requiring development to be carried out in accordance with the approved plans is not necessary as the decision grants *express consent,* not *planning permission*. The condition is meant to facilitate applications under s73 for minor material amendments to a planning permission and so is not relevant when granting express consent for the display of an advertisement.[15]

55. Section 38(6) does not apply to advertisements and the requirement for biodiversity enhancement in Policy 9 of Future Wales does not apply. Section

[12] Model condition 12 in Circular WGC 016/2014 and DOTDocs
[13] Model condition 15
[14] Circular WGC 016/2014
[15] Circular WGC 016/2014 paragraph 5.31

6(1) of the Environment (Wales) Act 2016 states: 'A public authority must seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions' (emphasis added). As stated earlier in this chapter the assessment of advertisement appeals is confined to the issues of amenity and public safety. Seeking biodiversity enhancements or imposing a condition requiring biodiversity enhancements would not be consistent with the proper exercise of our functions with regard to the determination of advertisement appeals.

Split decisions

56. Where the LPA has made a split decision the advertisements which are subject of an appeal are dependent on the approach taken by the LPA:
    - Where consent has been refused for some signs but granted for others it is only necessary to deal with those which were refused;
    - Where consent has been granted subject to a condition which effectively refuses consent for some signs it is only necessary to deal with the signs which have been refused;
    - Where consent has been refused for some of the signs applied for but has not been granted for the others, despite indications that there is no objection to them, it is necessary to deal with all the signs applied for in the original application.

57. If it is not clear which signs are subject of the appeal it will be necessary to go back to the parties for clarification/confirmation.

Express consent not required

58. If it is argued that express consent is not required, this should be acknowledged but noted that, as the appeal follows an application for express consent, it is being determined on that basis.

59. However, if an applicant for express consent specifically requests a determination, the Judge in *Thomas v NAW & Neath Port Talbot* [2009] EWHC 1734 (Admin) found that the Inspector has the jurisdiction to determine the issue. So, if a determination has been requested, one should be made. Notwithstanding this, sufficient evidence would need to have been provided to allow a reasoned conclusion to be reached.

60. Advertisements should not be dealt with which:
    - have been withdrawn from the application because they do not need express consent
    - the appellant and LPA agree do not require express consent.

Appeals against conditions

61. Regulation 15 states that sections 78 and 79 of the 1990 Act shall apply in relation to applications for express consent. Section 78 of the 1990 Act (as modified by Part 3 of Schedule 4 to the Regulations), provides a right of appeal

against a grant of express consent subject to conditions. These are in effect Type 1 ('section 79' appeals), although the time period for an appeal to be made is 8 weeks. More advice can be found in 'Appeals against conditions' chapter of the manual.

62. The banner heading should state:
The appeal is made under Regulation 15 of the Town and Country Planning (Control of Advertisements) Regulations 1992 against conditions imposed when granting express consent.

63. Regulation 15 refers only to sections 78 and 79 and there is no mention of sections 73 or 73A. Consequently, a LPA has no power to accept an application made under either of these sections to grant advertisement consent for an advertisement without complying with a condition(s) imposed on a previous consent (Type 2 and Type 3 as described in the 'Appeals against Conditions' chapter). Such appeals should be turned away as invalid when they are received. If one makes it through the system the appellant should be sent a letter explaining the situation and offering a chance for the appeal to be withdrawn.

Discontinuance Notices

64. Whereas advertisements being displayed with express consent can be revoked or modified[16], discontinuance action deals only with advertisements being displayed with deemed consent[17]. Class 14 of Part 1 of Schedule 3 of the Regulations grants deemed consent to any advertisement that has been displayed with express consent once the express consent expires, and Class 13 grants deemed consent for an advertisement that has been displayed on a site continually since 1 April 1974 without any express consent. A discontinuance notice may thus be served in respect of either a particular advertisement or a site used for the display of advertising. There is a right to appeal against a discontinuance notice.

65. The Courts in *Westminster City Council v Moran* [1998] EWHC Admin 637; held that "continually" does not mean "continuously". An interruption in the use of the site for display of advertisements since 1974 does not deny the user deemed consent. Hence the display of advertisements on a basis which is regularly occurring is enough to secure deemed consent rights. However, Class 13 does not apply if there has been a material increase in the extent to which the site has been used. In *R (oao) Clear Channel UK Ltd v Hammersmith & Fulham LBC* [2009] EWCA Civ 2142, the Courts held that a larger structure with a different form of illumination was a material change which meant the deemed consent that had been built up since 1974 had been lost and the display of the sign was unlawful.

66. A discontinuance notice is a formal document that, once it takes effect, can result in conviction for non-compliance. In this respect it is similar to an enforcement notice. However, an important distinction is that a discontinuance notice can only be served against a lawful display.

[16] Regulation 16
[17] Regulation 8

67. A discontinuance notice may only be served where the LPA is satisfied that the removal of the advertisement is necessary 'to remedy a substantial injury to the amenity of the locality or a danger to members of the public' (regulation 8(1)). At appeal consideration is given as to whether the notice is necessary to remedy a substantial injury to amenity or a danger to members of the public and takes into account any evidence that the LPA has acted in the light of a well-formulated advertisement control policy[18].

68. The Courts have accepted that the test in regulation 8 is somewhat stricter than that applicable where an application for express consent is being considered, but it is suggested that in practice this is likely to be a distinction without a difference. [*R (Clear Channel (UK) Ltd v S of S* [2004] EWHC 2483 Admin]. Even so, there may be cases where harm is found but that this is judged not to amount to substantial injury.

69. In *Palisade* it was held that: "*to spoil the character and appearance of an area conveys very well, in my view, the effect that is relevant for the purpose of these proceedings, that is to say, the effect of inflicting substantial injury to the amenities of an area*."

70. As regards 'danger to the public', although there is no case law to establish this, it should be noted that this too appears to be a stricter test than applicable when considering an application for express consent, where powers are exercised 'the interests of public safety'.

71. Where an advertisement is being displayed following the expiry of a grant of express consent, the considerations that were taken into account in granting that express consent would clearly be relevant (although not the only factor) in considering whether to take discontinuance action. [*R (Clear Channel (UK) Ltd)*]. However, unlike England, Regulation 8 does not require an LPA, in considering whether to serve a discontinuance notice, to have regard to any material change in circumstance that has occurred (that is, since the advert was first displayed whether with deemed or express consent). The Courts have accepted that there does not need to have been a material change in circumstances to justify the service of a notice, although there will be in some cases. [O'Brien v S of S and Doncaster MBC [2001]. Equally, it is not sympathetic to the argument that a particular advertisement has been in existence for many years. [*Chequepoint (UK) Ltd*].

Discontinuance action in a conservation area

72. Where the site of an advertisement is within a conservation area, it has been held that the exercise of the power to serve discontinuance notices under the Regulations is a function by virtue of the 1990 Act, and thus one to which applies the duty (under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. [*R (Clear Channel (UK) Ltd*, at paragraphs 29-42].

[18] TAN 7 paragraph 24

Contents of a discontinuance notice

73. According to Regulation 8(2)(c) a discontinuance notice "*shall specify the advertisement or the site to which it relates*". It is important that the site or the advertisement is clearly and precisely defined. If, for example, a poster panel at first floor level on the flank wall of a building is the target for removal and there are other advertisements at lower level on that wall which are not, the latter will be covered by the terms of the notice too if the site is merely specified as the flank wall.

74. The notice should also include the date on which it is served and must specify the period at the end of which it will take effect (regulation 8(3)). The effective date of the notice must be at least 8 weeks after the date on which it is served. This means 8 weeks after the date it is received by the person on whom it is served, not 8 weeks after the date it is posted. Although there may be various recipients, there is only one notice, so it is important that it is issued to all intended recipients at the same time.

75. The date by which the display or use of the site must be discontinued must be specified in the notice and must be a reasonable period of time depending on any works which will be needed for the display to cease. This period, often 4 weeks, is designed to give time to remove the display and any supporting structures. Requests are sometimes made at appeal to extend the period but a plea that the display should remain for a further period of a year to allow a poster company to honour a commercial contract is unlikely to be relevant to the purpose of the period.

Service of a discontinuance notice on an advertiser

76. A discontinuance notice is served on:
    - the owner of the site on which the advertisement is displayed;
    - the occupier of the site, if different; and
    - any other person who undertakes or maintains the display of the advertisement;

77. Anyone served with a notice may appeal against it at any time before it is due to come into effect. As noted above, the effective date of the notice must be a date not less than 8 weeks after service. Where an appeal is made the notice has no effect until the appeal is determined or withdrawn (Regulation 8(4)).

78. The LPA may withdraw a discontinuance notice or, if no appeal is pending, extend its compliance period. In either case, the LPA is required to notify those served with the original notice (Regulation 8(6)). If the time for compliance is extended, this is generally seen as an act of grace without legal consequences [*Joyner v Guildford Corporation* (1954) 5 P&CR 30)].

Appeal against a discontinuance notice

79. Any appeal against the notice must be made before it comes into effect and in the absence of any such appeal, the advertisement will be unauthorised.

80. Section 79 of the 1990 Act, as modified by Schedule 4 Part 5 of the Regulations, enables the Welsh Ministers at appeal to allow or dismiss the appeal. Any part of the notice may also be reversed or varied, whether or not the appeal relates to that part. Unlike in England the power does not exist in Wales to correct any defect, error or misdescription in a notice.

81. Where it is decided that there is no substantial injury to amenity or danger to the public (as the case may be) the notice should be quashed. It should also be quashed where it contains an error that is fundamental to its purpose and is incapable of correction without prejudice to the parties on whom it was served.

82. The Act, as modified by Schedule 4, enables the Welsh Ministers to deal with the matter as if an application for express consent had been made and refused for the reasons stated for the taking of discontinuance action. In quashing a notice regard can be had to this power. However, since the exercise of this power is discretionary, it is not necessary to formally consider the matter at appeal unless a request to do so has been made.

83. If such a request has been made, it does not follow that a decision to quash a notice should necessarily result in a grant of express consent. A display that has been found not to cause substantial injury might nevertheless be detrimental to amenity and thus unsuitable for grant of express consent. In any event, with the quashing of the notice the advertisement will continue to benefit from deemed consent. If a period of express consent is granted it will prevent any further discontinuance action until after the expiry of the period of this consent.

84. A request is sometimes made at appeal for express consent for an alternatively sized advertisement in the event that the appeal display is considered to create substantial injury. However, the power in the Act, as modified, is limited to consideration of the proposal at appeal. A modified proposal invariably amounts to a new proposal, which should not be entertained. Upholding the notice does not prevent the appellant from seeking a separate express consent from the planning authority.

Discontinuance action and the Human Rights Act

85. It was held in the Courts in 2000 that the right to display (with deemed consent) an advertisement might constitute a 'possession' within the terms of article 1 to the First Protocol to the European Convention on Human Rights; and that, if it did, the deprivation of that possession, in the absence of a general right to compensation, might constitute a breach of the Convention – although not where it could be established that such dispossession was in the public interest and subject to conditions provided by law [*O'Brien v Secretary of State and Doncaster MBC* [2001] JPL 375, at paragraph 20]. Subsequent case law has tended to support that view but has indicated that the planning system generally does represent a proportional and fair balancing of competing interests. A challenge to discontinuance action based on an argument of breach of human rights would accordingly be doomed to failure.

Enforcement

86. It is an immediate offence, under s224 of the 1990 Act and Regulation 27, to display an advertisement that requires express consent without having obtained it. The Regulations also provide for the issue of discontinuance notices to remove lawful advertisements displayed with deemed consent (see above). Further advice can be found in the 'Enforcement' chapter.

Regulation 7 Directions

87. Under Regulation 7 the Welsh Ministers can, in response to a proposal by a LPA and subject to prior consideration of any objections, make a statutory direction which effectively removes deemed consent from certain types of advertisements in a specific area. All requests for Regulation 7 directions are determined by the Welsh Ministers following the submission of a report by an Inspector.

88. The following points should be noted:
- a direction does not forbid display: it merely requires express consent to be obtained;
- a direction applies to a defined area or a particular place;
- a direction will relate to a particular class of advertisements within Schedule 3 of the Regs (or a specific category of advertisements within a class)
- Class 12 (advertisements inside buildings) and Class 13 (sites used for the display of advertisements on 1 April 1974) cannot be the subject of such directions;
- directions can be for a specific period of time or indefinite.
- there is a statutory requirement for proposed and approved directions to be published in the press - see Regulations 7(2) and (7).

89. Before a Direction is made the LPA will have to show that it would improve visual amenity and that there is no other way of controlling the display of that particular Class of advertisement. This will include details of the area to be covered and evidence of the harm caused and the remedial steps already taken to combat the harm.

90. The Inspector will need to carry out a detailed site visit of the area in order to get a feel for its overall character and the prevalence or otherwise of relevant advertisements. The subsequent Report should contain a recommendation to confirm the Direction or not. In the case of a Direction covering a number of areas or streets, the recommendation can exclude certain areas, but cannot include new ones. The LPA should indicate how long it wishes the Direction to last. Subject to good reasons, a different time limit can be recommended or a limit introduced where an indefinite period has been requested.

Area of Special Control of Advertisements Orders

91. Reg 18 places a duty on a LPA to consider, from time to time, whether any part or additional part of its area shall be designated as an ASCA. These powers cannot be exercised in the interests of public safety (within the meaning of Reg 4(1)).

92. New or modified areas of special control are designated by an order made by a LPA and approved by the Welsh Ministers in accordance with the provisions of Schedule 5 of the Regulations. The procedure is similar to that for a Regulation 7 Direction. It involves a two-stage publication, the first by the local authority when seeking approval for the order and the second after the order has been approved. However, unlike the regulation 7 procedure, the forms of notice to be used are specified in the Regulations and there is a requirement for publication for 2 successive weeks in at least one local newspaper. Moreover, unlike the regulation 7 procedure, there is a provision for the holding of an inquiry or a hearing to consider representations of objection to a proposed order.

93. Before approving an Order for an ASCA, a degree of special protection, on grounds of amenity, must be justified. The decisive consideration is whether a stricter degree of control is essential, in addition to the LPA's normal powers of control (including discontinuance notices), to preclude the display of advertisements which would otherwise be permitted. If an Order is approved, the LPA is required to review it at, at least, 5 yearly intervals, taking account of changes which may have occurred in the locality in the meantime[19].

[19] TAN 7 paragraph 21