RE: SCOPE OF "AMENITY" UNDER THE ADVERTISING CONTROL REGULATIONS

O P I N I O N

Introduction

1. We are instructed by Leigh Day to advise Adfree Cities (formally Upper Space CIC) on the considerations that local planning authorities ("LPAs") may take into account when determining what is in the interests of "amenity" under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ("**the Advertising Control Regulations**").

2. In summary, "amenity" is a broad term that is not limited to visual or aural impacts. Case law establishes that "amenity" is a broader term encompassing "the pleasantness of the neighbourhood," which comfortably covers matters beyond aural and visual impacts, such as pride of place and general wellbeing issues. Accordingly:

   (a) It would be an error of law for local planning authorities to fail to consider objections that go beyond aural and visual amenity, but still fall within the broader concept of amenity described in this advice,

   (b) Local planning authorities are entitled to refuse advertising consent on the basis of such objections,

   (c) Local planning authorities are entitled to include policies in their development plan documents which emphasise the interests of amenity, as it is properly understood in this broader sense,

   (d) Local authorities can restrict the subject matter, content or design of what is to be displayed in adverts, where relevant to this wide concept of amenity.

Background

3. Adfree Cities is an NGO based in the UK whose stated aim is to reduce the harms associated with corporate outdoor advertising. It supports those seeking to oppose planning applications for new digital advertising screens. We are instructed that residents commonly find such screens to be intrusive, overly bright and detrimental to neighbourhoods and residents' pride in place. We are also aware that Adfree Cities' research has found that 82% of outdoor advertising sites are located in the poorest half of England and Wales.[1]

4. The content of non-broadcast adverts is, generally, regulated by the Advertising Standards Authority Limited ("ASA"), a non-statutory company limited by guarantee.[2] It assesses compliance with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (known as the "CAP Code"), which is produced by an industry body, the Committee of Advertising Practice Limited ("CAP"). The CAP Code is not underpinned by any legislation.[3] As the ASA is not a statutory body, it has no formal powers of enforcement, but its decisions may lead to adverse publicity, the withholding of services by publishers and revocation of trading privileges.[4] Generally, the ASA does not regulate matters concerned with the land use implications of advertising.[5]

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[1] https://www.theguardian.com/media/2024/mar/04/four-in-five-billboard-ads-in-england-and-wales-in-poorer-areas.

[2] Some advertising may engage other sector-specific regulatory regimes, the number of which has increased in recent years: CAP Code, page 121. Advertising may also engage trading protections under the Business Protection from Misleading Marketing Regulations 2008 or Part 4 of the Digital Markets, Competition and Consumers Act 2024 (Consumer rights and disputes) and thus be subject to enforcement action by the relevant "local weights and measures authority", which is usually the local authority "Trading Standards" team. Enforcement of those provisions can also be undertaken by the Competition and Markets Authority, and in respect of the Business Protection from Misleading Marketing Regulations 2008, Ofgem (the Gas and Electricity Markets Authority). The ASA also takes into account these legislative provisions when it rules on complaints about marketing communications that are alleged to be misleading: CAP Code, page 18; see also pages 124-125 and 130-133.

[3] Although decisions of the ASA in respect of compliance with it are amenable to judicial review: *R (Coys of Kensington) v Advertising Standards Authority* [2012] EWHC 902 (Admin), [12].

NB: Throughout this opinion we use BAILII links for judgments of the court where they are available.

[4] CAP Code, page 4.

[5] The main exceptions are (i) it will have regard to spatial limitations resulting from the means of communication used to ensure material information is not omitted (CAP Code, para 3.3); and (ii) alcohol marketing communications must not be directed at people under 18 through the "context in which they appear" (CAP Code, para 18.15).

5. Local planning authorities, by contrast, are limited to considering matters of amenity and public safety in relation to adverts.[6] We are instructed that many local authorities take a narrow view of the term "amenity" and essentially only consider the visual or aural impacts of advertising screens before deciding whether or not to grant consent under the Advertising Control Regulations.

6. We are also aware that some local planning authorities provide or seek to provide policies that add more detail as to the meaning of the term "amenity" in their local plans. For example, Bristol City Council's draft local plan included such a policy, although the Council has subsequently proposed the following main modification to amend it in response to the Examining Inspector's concerns:[7]

> "An advertisement will be considered to have an unacceptable impact on amenity where it would:
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> • Create or reinforce an incongruous feature in, or result in a negative visual impact on, its immediate neighbourhood;
>
> • Result in harmful clutter <u>within</u> ~~or visual commercialisation of~~ residential areas, <u>affecting their overall visual and aural amenity</u>;
>
> • Detract from the character or setting of any feature of scenic, historic, architectural, cultural or similar interest;
>
> • Be unduly prominent in medium or long-distance views;
>
> • Cause a noise or other nuisance; or
>
> • Result in a negative impact upon residents' living conditions by reason of its siting or illumination."[8]

Law and policy regarding advertising consent and the term "amenity"

<u>Statutory framework</u>

7. Section 220(1) of the Town and Country Planning Act 1990 ("**TCPA 1990**") requires the Secretary of State to make regulations that "*make provision for*

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[6] Regulation 3 of the Advertising Control Regulations.

[7] https://www.bristol.gov.uk/files/documents/9951-exa059-250901-draft-schedule-of-main-modifications-main-document/file page 201. This appears to follow a number of submissions on the policy: see https://www.bristol.gov.uk/files/documents/7705-240521-catalogue-of-representations-received-by-policy/file pp 20-27.

[8] https://www.bristol.gov.uk/files/documents/9280-in8-inspectors-action-note-2-12-may-2025/file page 13. The rationale for the main modification appears to be whether the consideration of "visual commercialisation" is necessary.

restricting or regulating the display of advertisements so far as appears to the Secretary of State to be expedient in the interests of amenity or public safety". Under s. 220(2), those regulations may provide for, among other things, regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed and the manner in which they are to be affixed to the land.

8. The Advertising Control Regulations were made in exercise of the power conferred by s. 220 TCPA 1990 (as well as other relevant powers).

9. Regulation 2(1) states that amenity "includes aural and visual amenity" (emphasis added). It accordingly does not seek to limit the scope of the term.

10. A local planning authority is required to exercise its powers under the Advertising Control Regulations in the interests of amenity and public safety, taking into account the provisions of the development plan (so far as they are material) and any other relevant factors: reg. 3(1).

11. Factors relevant to amenity "include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest" (emphasis added): reg. 3(2)(a). Regulation 3(2) is explicit that these emphasised factors do not prejudice the generality of "any other relevant factors" that can be taken into account (again emphasising the broadness of the term "amenity").

Policy on advertising consent

12. Paragraph 141 of the extant National Planning Policy Framework (December 2024[9]) ("**NPPF**") relates to advertising:

> "141. The quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts."

13. The Planning Practice Guidance ("**PPG**") on advertisements also provides:

[9] We are aware that an updated consultation NPPF has been published which deletes this paragraph. If and until that is adopted, the extant version remains in effect.

"**What factors can a local planning authority take into consideration when determining an advertisement application?**

Regulation 3 requires that local planning authorities control the display of advertisements in the interests of amenity and public safety, taking into account the provisions of the development plan, in so far as they are material, and any other relevant factors.

Unless the nature of the advertisement is in itself harmful to amenity or public safety, consent cannot be refused because the local planning authority considers the advertisement to be misleading (in so far as it makes misleading claims for products), unnecessary or offensive to public morals.

Paragraph: 026 Reference ID: 18b-026-20140306

Revision date: 06 03 2014

…

What does "Amenity" mean?

"Amenity" is not defined exhaustively in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. It includes aural and visual amenity (regulation 2(1)) and factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest (regulation 3(2)(a)).

It is, however, a matter of interpretation by the local planning authority (and the Secretary of State) as it applies in any particular case. In practice, "amenity" is usually understood to mean the effect on visual and aural amenity in the immediate neighbourhood of an advertisement or site for the display of advertisements, where residents or passers-by will be aware of the advertisement.

So, in assessing amenity, the local planning authority would always consider the local characteristics of the neighbourhood: for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, the local planning authority would consider whether it is in scale and in keeping with these features.

This might mean that a large poster-hoarding would be refused where it would dominate a group of listed buildings, but would be permitted in an industrial or commercial area of a major city (where there are large buildings and main highways) where the advertisement would not adversely affect the visual amenity of the neighbourhood of the site.

If the advertisement makes a noise, aural amenity would also be taken into account before express consent would be given.

Paragraph: 079 Reference ID: 18b-079-20140306

Revision date: 06 03 2014"

14. National planning guidance should not, however, be taken as gospel on matters of statutory interpretation, and there are several cases where it has been found to be wrong e.g. *Armstrong v SSLUHC* [2023] PTSR 1148. Ultimately, local authority regulation of adverts is governed by the Advertising Control

Regulations. The extent of local authority powers in this area is accordingly a matter of law.

Statutory interpretation

15. The modern approach to statutory interpretation requires the courts to ascertain the meaning of the words in a statute in the light of their context and purpose: *Kostal UK Ltd v Dunkley* [2021] UKSC 47, [2022] 2 All ER 607 at §109.

16. The Advertising Control Regulations must be interpreted in the light of the enabling statutory power, here s. 220 TCPA 1990: see e.g. *R (Kumar) v Hillingdon LBC* [2021] PTSR 686 at §13. The concept of "amenity" in the Advertising Control Regulations derives from s. 220 and thus its meaning must be synonymous with the meaning given to it in the statute.

17. Moreover, it is a general rule of statutory interpretation that words or terms used more than once in the same legislation are taken to have the same meaning whenever they appear, but this is a presumption that can be rebutted where the context requires: see e.g. *For Women Scotland v Scottish Ministers* [2025] 2 WLR 879 at §13, §176. The term "amenity" features in a number of other parts of the TCPA, including (inter alia):

    (a) the making of tree preservation orders which, under s. 198(1), may be made if it appears to the local planning authority to be expedient in the interests of amenity; and

    (b) the issuing of an enforcement notice, one of the purposes for which may be remedying any injury to amenity which has been caused by the breach of planning control (s. 173(4)(b)).

18. In addition, "amenity" is a term used in other planning legislation, some of which includes other statutory instruments made in exercise of powers under the TCPA 1990, such as the Town and Country Planning (General Permitted Development) Order 2015.

Relevant case law

19. Case law establishes the following propositions.

20. First, the procedure for obtaining advertising consent is "a self-contained code for the regulation of advertising material generally": *New World Payphones Ltd v Westminster City Council* [2019] EWCA Civ 2250, [2020] PTSR 888 at §23.[10]

21. Second, while reg. 3(1)(b) of the Advertising Control Regulations refers to "any other relevant factors", those factors must be related to amenity and public safety: *JC Decaux Ltd v First Secretary of State* [2003] EWHC 407 (Admin) at §§10, 13; see also *R (Whiteside) v Croydon LBC* [2023] EWHC 1806 (Admin) at §35.[11] A local planning authority is therefore not entitled to refuse advertisement consent because e.g. it disagrees with the content of the message to be displayed: *Butler v Derby City Council* [2006] 1 WLR 1346 ("*Butler*"), §32.

22. Third, although "amenity" is one of only two overarching factors the local planning authority is entitled to consider, "amenity" is a broad concept. Whether something is related to "amenity" is a matter of fact and degree as well as common sense. What would not be considered as relevant to amenity in one part of a local authority's area might well be considered relevant to amenity in another. Similarly, what might be acceptable on one street may be wholly unacceptable in another: *Berg v Salford City Council* [2013] EWHC 2599 (Admin) ("*Berg*"), §31[12]; *Lisle-Mainwaring v Kensington and Chelsea RLBC* (Crown Court, Unreported, 12 July 2016, [2016] 7 WLUK 237) ("*Lisle-Mainwaring*"), §18.

23. Fourth, harm to amenity can be founded on the fact that development is unsightly: *Allsop v Derbyshire Dales District Council* [2012] EWHC 3562 (Admin), §31 (a lurid face painted on a trailer); *Berg*, §25; *Lisle-Mainwaring*, §22 (candy-stripe paint on a building façade). That can include a structure that is obtrusive or amounts to a striking new illumination: *R (Clear Channel Ltd) v*

[10] Citing *Infocus Public Networks Limited v Secretary of State for Communities and Local Government and the Mayor and Commonality of the Citizens of London* [2010] EWHC 3309 (Admin), §66.

[11] "…the 2007 Regulations make clear in regulation 3(1) that it only has purchase with issues of amenity and public safety. Improving the public realm and positively enhancing the setting of advertising are only relevant in that context."

[12] Endorsing the Best Practice Guidance issued by the Office of the Deputy Prime Minister, cited at §30.

Hammersmith and Fulham LBC [2009] EWHC 465 (Admin) ("***Clear Channel***"), §20. Proximity to residential property is also relevant: ***Clear Channel***, §20.

24. Fifth, however, "amenity" can also be more general, and encompasses:

    (a) "the pleasantness of the neighbourhood": *R (Liverpool City Council) v Derwent Holdings Ltd* [2008] EWHC 679 (Admin) ("***Derwent***"), §10, §19;

    (b) the outlook of neighbouring occupiers and their living conditions: *Cab Housing Limited v Secretary of State for Levelling Up, Housing and Communities* [2023] EWCA Civ 194, [2023] PTSR 1433, §51; and

    (c) adequate and convenient access to services, including healthcare and education: *Stewart Milne Group Limited v The Scottish Ministers* [2015] CSIH 89, §§22-23.

25. Sixth, assuming the local planning authority properly understands the broad scope of the term "amenity," whether a particular advertisement adversely affects amenity, and if so to what extent, is "very much" a matter of judgment for them: ***Butler***, §45.

Analysis

Amenity

26. "Amenity" is not defined as a term in the TCPA 1990. The ordinary meaning of the word is "the pleasantness of a place" (Oxford English Dictionary, 12th edn) or "the quality of being pleasant or agreeable" (Merriam-Webster Dictionary, online). This ordinary meaning was endorsed by the court in ***Derwent***. It is clearly broad in scope, and it is clearly not limited to aural or visual amenity.

27. The broadness of the term is also apparent from regulation 2 of the Advertising Control Regulations ("includes").

28. Although each proposal will turn on its own features, the following factors fit comfortably within the broad definition of "amenity":

    (a) pride of place,

    (b) the commercialisation of residential areas,

    (c) general wellbeing issues,

(d) how the presence of adverts makes local residents feel, both individually and as part of their community.

29. "Amenity" is a term set out in statute and its meaning ultimately falls to be determined by the courts. National planning guidance on the term "amenity" cannot override or restrict its scope. However, the PPG and the NPPF also recognise that factors beyond visual and aural amenity are capable of being relevant for the purposes of the Advertising Control Regulations. The PPG in particular focuses on aural and visual amenity without seeking to circumscribe other potential amenity factors.

30. Accordingly, a local planning authority would err in law if it shut its mind to factors such as pride of place when such arguments are presented to it. Local planning authorities must consider objections to proposed advertising that include the considerations listed at paragraph 28 above, as these considerations are clearly relevant to the broad concept of "amenity."

31. Obviously, the weight to be given to any such consideration remains a matter for the decision-maker in any given case. The point is that local planning authorities are able to consider these matters when they are raised, and further, they are entitled to refuse consent on the basis of these matters.

32. We also consider that local plan policies which emphasise the materiality of these additional amenity considerations will be compliant with the law and therefore, all other things being equal, are likely to be considered sound for the purposes of examination.

Regulation 3(4)

33. Finally, we note that regulation 3(4) of the Advertising Control Regulations allows a local planning authority to impose limitations or restrictions relating to the subject matter, content or design of what is to be displayed, but only where "required in the interests of amenity or public safety."

34. It follows that where the subject matter of the advertisement can be justifiably said to do harm to an aspect of amenity (such as pride of place), the content of the advert can in principle be restricted by a local planning authority. So long as the justification for this restriction is clearly linked to harm to amenity, as

defined by the courts (e.g. “the pleasantness of the neighbourhood” – ***Derwent***), then such a restriction would not stray into the forbidden territory of refusing consent for an advert which the local planning authority has some moral or political objection to. The reason for the restriction would not be that the local planning authority disagrees with the advert: but because harm to amenity has been demonstrated.

35. Local planning authorities should therefore consider whether they have been presented with sufficient evidence by objectors regarding the impact of a particular form of advertisement on the amenity of the area, including harm to residents’ pride of place and general sense of wellbeing.

36. It may be, for example, that if sufficient evidence was presented to a local planning authority that the display of particular categories of advert had a generalised negative impact on residents’ sense of the pleasantness of their neighbourhood, that would be sufficient to impose a restriction prohibiting those categories. The most obvious potential example would be adverts for sex-related establishments or services, but it could in principle include e.g. fast food or gambling. A local planning authority would need to be careful to ground its reasoning on the impacts of such adverts on amenity generally rather than an in-principle objection to the subject-matter. Statements from residents affected by advertising and/or academic research would be useful evidence in that regard.

37. It would not, in our view, be an answer to this point to say that the content of the adverts is to be left to the ASA. As set out above, the ASA (i) is a non-statutory body without powers of enforcement and (ii) does not concern itself with aspects of the content of the adverts insofar as they are related to the location of the proposed advertising.[13]

[13] The principle in *Gateshead MBC v Secretary of State for Environment* [1994] Env LR 37, to the effect that “[i]t is not the job of the planning system to duplicate controls which are the statutory responsibility of other bodies” (para 125), accordingly does not apply. The ASA does not have any statutory responsibility for advertising, or any responsibility at all in relation to where adverts are placed. And, in any event, the *Gateshead* line of authorities is clear that local planning authorities are not required to assume parallel regimes will operate effectively even where such regimes exist.

38. An advert that was particularly large or bright such that it interfered with the enjoyment of neighbouring residential property could also in principle be harmful to amenity. In the related context of nuisance, see *Fearn and others v Tate Gallery* [2023] UKSC 4, where the Supreme Court noted at [15] that offensive sights such as junked or abandoned vehicles can constitute a nuisance.

Conclusion

39. A summary of our conclusions is in the introduction to this advice.

40. Do not hesitate to contact us with any further questions.

ALEX SHATTOCK

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19.12.25