

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
REPORT UNDER DELEGATED AUTHORITY
REPORT BY THE DIRECTOR OF PLANNING AND PLACE

1.0 INTRODUCTION

- 1.1 There is an existing Regulation 7 Direction in place within the Borough removing the deemed consent for the display of estate agent advertising boards within all areas included in the Direction. This Direction has been in force for 10 years and is due to expire on 27 September 2020.
- 1.2 This report recommends that the Council apply to the Secretary of State for Housing, Communities and Local Government for a renewal of the Regulation 7 Direction withdrawing ‘deemed consent’ for such boards in the areas of the Royal Borough of Kensington and Chelsea covered by the existing Direction, for a further 10 years.
- 1.3 The effect of the Direction would be that deemed consent for the display of estate agents’ boards relating to the sale or letting of premises which are advertisements within Schedule 3, Part 1, Class 3A of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations) shall not apply for a period of 10 years within the area. Estate agent advertising boards would require express consent to be granted by the Council prior to being displayed within the areas included within the Direction.

2.0 BACKGROUND

- 2.1 Almost all forms of advertising are subject to planning control and require either “express” consent or benefit from “deemed” consent before they may be displayed. Express consent is granted by the local planning authority (LPA) or, on appeal, by the Secretary of State, in response to a specific application to display an advertisement. Deemed consent permits the display of certain types of advertisement without the need for specific permission from the LPA.

- 2.2 The rules governing estate agents' boards are contained within Schedule 3, Part 1, Class 3A of the Town and Country Planning (Control of Advertisements) Regulations 2007. This gives deemed consent rights to display an advertisement relating to the sale or letting of residential or commercial premises. The consent is subject to certain limitations. These include a restriction to one board per property for sale or let, and a requirement to remove that board within fourteen days of completion of the sale/grant of a tenancy.
- 2.3 If imposed, a Regulation 7 Direction would remove the estate agents "deemed consent" rights to display estate agent advertising boards within the designated Regulation 7 areas. The result of this is that in order to display an advertisement within these areas, express consent would need to be obtained. The Direction would not impose an absolute ban on the display of the specified advertisements within the area but would only permit those adverts which have been granted "express" consent by the Council.
- 2.4 Regulation 7 Directions were first put in place in the Royal Borough in 1986. The initial Direction, known then as an Article 15 Direction, was narrowly drawn when first introduced. The first Direction was for an initial trial period of one year and a number of Directions were subsequently made by the Secretary of State.
- 2.5 On 1 June 1994, the Secretary of State for the Environment issued an Article 7 Direction under the Town and Country Planning (Control of Advertisements) Regulations 1992, withdrawing 'deemed consent' for the display of estate agents' boards in seven areas within the Royal Borough of Kensington and Chelsea. This Article 7 Direction was for ten years and expired on the 18 June 2004.
- 2.6 The current Direction was made on 24th August 2010 and came into force on 27 September 2010 for a period of 10 years.
- 2.7 Since their implementation there has been a marked improvement in the visual appearance of these areas contained within the Direction. Most estate agents co-operate with the Direction and the nature of the Direction has allowed for more effective enforcement with better use of staffing resources.

- 2.8 A Regulation 7 Direction, once imposed would mean that where estate agents boards are displayed without express consent they would be easily identifiable as illegal and the Council would be in a position to remove and/or pursue prosecution of the person/company responsible for the display, if it considered the advertisement was harmful to visual amenity or public safety.

3.0 REASONS FOR APPLICATION FOR REGULATION 7 DIRECTION

- 3.1 A survey undertaken by the Council prior to the commencement of the existing direction indicated that the demand for the display of estate agent boards had not diminished and was particularly strong in residential areas subject to multi-occupancy. The streets included in the existing direction are predominantly located within designated conservation areas where the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The proliferation of boards, whether legal or illegal, in these areas was considered to detract from the facades of individual buildings and result in an untidy, cluttered street scene.
- 3.2 Due to the success of the existing direction in keeping the streets clear of boards, it is proposed to renew the direction for a further 10 years. If the regulation was not renewed, then estate agents would regain their deemed consent rights to display estate agent boards in streets, which, for the last 10 years have remained virtually free of estate agent boards. The deemed consent rights to display boards do have some restrictions, only one board is permitted to be displayed per property and they are not permitted to be displayed for more than 14 days following the sale or grant of lease.
- 3.3 However, it is much harder for officers to secure prosecutions in these cases where it is not always known which estate agent board was displayed first (and is permitted) or when the sale or lease was concluded. Without the control of the display of estate agent advertising boards afforded to the LPA with a Direction there is concern that there would be proliferation of boards which would result in a cluttered and unsightly street scene in streets that had previously remained clear of boards, which would be harmful to the character and appearance of these areas. The Council is concerned to safeguard the amenity and visual integrity of the Borough from the visual clutter associated with these boards.

3.4 The proposed areas cover all conservation areas north of Holland Park Avenue/Notting Hill Gate and all areas south of Holland Park Avenue/Notting Hill Gate. The areas proposed to be included in the Direction are the same areas covered by the existing direction. The Secretary of State concluded that gross visual intrusion has occurred or is likely to occur from estate agents' residential letting and sale boards within these areas, and this can only be properly addressed by the special protection afforded by the Direction.

3.5 These areas are as follows:

Conservation Area 1 – Oxford Gardens

Conservation Area 2 - Norland

Conservation Area 3 - Ladbroke

Conservation Area 4 - Pembridge

Conservation Area 6 - Kensington

Conservation Area 8 – Edwardes Square/Scarsdale & Abingdon

The “island” area to the east of Conservation Areas 8 and 27 up to the western boundary of Conservation Areas 9A, 9C, 9D and the southern boundary of Conservation Area 6

Conservation Area 9D – Cornwall

Conservation Area 10 – Queens Gate

Conservation Area 11A-D – Earl's Court Village, Courtfield, Earl's Court Square, Neverne Square, and the two associated island areas: the area delineated by and including Courtfield Road, the south side of Cromwell Road (between and including the eastern side of Ashburn Gardens and western side of Gloucester Road) and including that part of Ashburn Place and Harrington Gardens between conservation areas 11B and 10. Also the island area enclosed by conservation areas 10, 11B, 12 and

13A that includes Rosary Gardens, Brechin Place and the Old Brompton Road.

Conservation Area 12 - The Boltons

Conservation Area 13A – Thurloe/Smiths Charity part (western part, bounded by and including Onslow Gardens (running north-south) and including Selwood Terrace between Old Brompton Road and Fulham Road)

Conservation Area 16 – Sloane/Stanley

Conservation Area 17 – Chelsea Park/Carlyle

Conservation Area 18 – Chelsea (two southern parts only)

Sydney Street on both sides (entire length)

Conservation Area 19 Cheyne – only Oakley Street on both sides

Conservation Area 20 – Royal Hospital

Conservation Area 26 – Philbeach

Conservation Area 27 – Lexham

Conservation Area 28 – Colville; and

Holland Road on both sides

4.0 STATUTORY PROVISIONS AND POLICY CONTEXT CONSULTATION

- 4.1 It is considered that prior to the Direction coming into force the existence and proliferation of these boards in the streets listed above caused substantial harm to the visual amenity of the areas identified.
- 4.2 In seeking to use powers under Regulation 7, the Council has to act in the interests of amenity and public safety. Regulation 4(1) states that:

“A local planning authority shall exercise their powers under these Regulations only in the interests of amenity and public safety, taking 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.’

- 4.3 In this case the reason for proposing the Direction is to continue to protect the visual amenity of the parts of the Royal Borough areas most harmed, or likely to be harmed, by the proliferation of estate agent boards, whether legal or illegal.
- 4.4 Local Plan Policy CR4 (Streetscape) states that the Council will require improvements to the visual, functional and inclusive quality of our streets, ensuring they are designed and maintained to a very high standard, that street clutter is removed and that street furniture, advertisements and signs are carefully controlled to avoid clutter to support the Council's aim of driving up the quality of the Borough's streetscape.
- 4.5 Local Plan Policy CL3 (Heritage Assets, Conservation Areas and Historic Spaces) state that the Council will require development to preserve and to take opportunities to enhance the cherished and familiar local scene.

5.0 CONSULTATION

- 5.1 The Council has carried out a 6 week consultation on whether to apply to the Secretary of State to renew the existing direction for a further 10 years. As part of the consultation we notified all of our resident amenity grounds and wrote to 140 estate agents known to operate in the borough. The response was overwhelmingly positive with 73 comments in support and 2 objections. The main reasons given for their support of residents as a whole include:
- the detrimental impact the display of estate agent boards has on the attractiveness of the individual properties, streets and conservation areas;
 - there are alternative methods of selling/letting properties available that do not require boards (for example the internet).

- 5.2 Several responses asked for either a total ban of estate boards in the Royal Borough or for streets to be included that are not covered by the existing direction. For example, the Victoria Road Residents Association has sought the inclusion of Kensington Square, parts of Kensington Court, Launceston Place and Victoria Grove within the Direction. Another request was made for the Cheyne Conservation area to be included. Officers have inspected these areas and have not found them to be blighted by estate agent boards.
- 5.3 The Council has reviewed the decisions taken by the Planning Inspector and the Secretary of State to grant the existing Direction and consider that there has not been a material change to these areas, and therefore the application seeks to renew the Direction, for the same areas as covered by the existing direction.

6.0 CONCLUSION

- 6.1 It has previously been illustrated that the visual amenity of certain streets within the Borough were being compromised through excessive and/or illegal estate agents' board advertising. The majority of these streets form parts of conservation areas where the Council has a statutory duty to preserve or enhance the character or appearance of the area.
- 6.2 The existing Regulation 7 Direction which is in force has proved extremely effective in reducing visual clutter caused by the display of estate agents boards. Enforcement officers have been able to easily identify estate agent boards that are illegally displayed within these areas and been able to take immediate action to remove them. Enforcement officers have pursued a "zero tolerance" policy of seeking to prosecute estate agents that flout the Direction. Residents have also been extremely supportive of the existing Direction by reporting boards displayed in these areas and as a result the areas have remained virtually free of estate agent boards.

7.0 RECOMMENDATION

- 7.1 It is therefore requested that the Council write to the Secretary of State for Housing Communities and Local Government under Regulation 7 of the Regulations seeking a Direction withdrawing the deemed consent

under Class 3A to display estate agent boards in the areas described above, for the next 10 years, as a means of improving the appearance of these areas and in assisting enforcement officers to provide a more effective control over any future display of estate agents' boards.

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Director of Planning and Place

Background papers: The content of file ENF/20/02555

Report approved by: Jonathan Wade, Head of Spatial Planning

Signed: J.C.Wade

Date: 13th August 2020