Development Management
Practice Note

Control of Advertisements

July 2015
Preamble

This Development Management Practice Note is designed to guide planning officers and relevant users through the control of advertisements and deals primarily with procedures as well as good practice. It forms part of a series of new practice notes stemming from the Planning Act (Northern Ireland) 2011 (the 2011 Act) and any related subordinate legislation. The emphasis is very much on advice but where explicit legislative requirements must be followed these will be made clear.

Where appropriate this practice note will therefore highlight:

- Relevant legislation;
- Procedural guidance;
- Definitions;
- Best practice examples / relevant case law

This guidance is not intended to replace the need for judgement by planning officers and those making planning applications. Nor is it intended to be a source of definitive legal advice. Reference should be made to the actual legislation referred to in this document and if any discrepancy or conflict exists between the Practice Note and legislation the provisions of the legislation will prevail.
1.0 Introduction

1.1 Provisions to restrict or regulate the display of advertisements are made by regulations deriving from section 130 of the 2011 Act. This control is to be exercised only insofar as appears to the council to be expedient in the interests of amenity or public safety. These detailed Provisions are to be found within The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015, hereafter referred to as the Advertisement Regulations.

1.2 Since specific provision is made for the control of advertisements no attempt should be made to regulate them through normal planning control by attaching conditions to a planning permission. Such conditions are unnecessary in so far as they concern advertisements requiring express consent under the Advertisement Regulations, and ineffective because they are unenforceable in relation to advertisements granted deemed consent under these regulations. It may however be advisable to add an informative to relevant planning decisions drawing the applicant’s attention to the provisions of the advertisement regulations.

2.0 Legislative Context

2.1 Section 130 of the 2011 Act enables the Department to make regulations for controlling the display of advertisements in the interests of amenity or public safety.

2.2 The Advertisements Regulations subsequently provide the detailed provisions of the power to control the display of advertisements deriving from section 130 of the 2011 Act.

3.0 Definition of Advertisement

3.1 An ‘advertisement’ for the purposes of the 2011 Act and the
Advertisement Regulations is any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, 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 (section 250 (1) of the 2011 Act).

4.0 Scope of Control

4.1 The Advertisement Regulations provide that:
(i) some types of advertisements are exempt from control, and
(ii) certain advertisements may be displayed without express consent or deemed by the regulations to be granted (deemed consent).

4.2 Such consent takes effect for the use of the site for the purposes of the display whether by the erection of structures or otherwise, and for the benefit of any person interested in the site (regulation 3(5) of the 2015 Regulations).

4.3 Where the consent of the council is not exempt from control or deemed to be granted by the Regulations an application must be made for the express consent of the council to be granted.

(a) Advertisements exempt from control

The Advertisement Regulations provide for a number of situations where consent to display is not required (regulation 4(2)) and these classes of advertisements are listed in Schedule 2 along with conditions and interpretation as to their application. They are summarized below, but Schedule 2 should be referred to for the detailed conditions and interpretation.
- Class A. The display on a site of an advertisement on or consisting of a balloon not more than 60 metres above ground level.
- Class B. An advertisement displayed on enclosed land.
- Class C. An advertisement displayed in or on a vehicle.
- Class D. An advertisement incorporated in the fabric of a building.
- Class E. An advertisement displayed on an article for sale or on the container in, or from which, an article is sold.
- Class F. An advertisement required to be displayed by Standing Orders of either House of Parliament or by any enactment or any condition imposed by any enactment on the exercise of any power or function.
- Class G. A traffic sign placed under Article 29(3) or placed under Article 30(1)(b), 30(2), 31(1) (b) or 32 of the Road Traffic Regulation (Northern Ireland) Order 1997(a).
- Class H. The national flag of any country.
- Class I. An advertisement displayed inside a building.

(b) Certain advertisements are deemed by the Regulations to be granted (deemed consent).

An application for express consent for the display of certain classes of advertisements is not required in all cases. The Advertisement Regulations provide a number of situations where consent is deemed to be granted (regulation 5(1)) and these are listed in Part 1 of Schedule 3. They are summarized below, but Schedule 3 should be referred to for the detailed description and conditions which apply. In such cases consent to display is deemed to be granted subject to the conditions and limitations specified for the particular type of advertisement in question and the standard conditions contained in Schedule 1 of the Advertisement Regulations (except for the one exception noted in relation to Class 13 advertisements, advertisements relating to an election, under
regulation 5(1)(b))

- Class 1. Functional advertisements of government departments, district councils, statutory undertakers and public transport undertakers.
- Class 2. Miscellaneous advertisements relating to the premises on which they are displayed.
- Class 3. Miscellaneous temporary advertisements.
- Class 4. Illuminated advertisements on business premises.
- Class 5. Advertisements (other than illuminated advertisements) on business premises.
- Class 6. An advertisement on a forecourt of business premises.
- Class 7. Flag advertisements.
- Class 8. Advertisements on hoardings relating to building operations.
- Class 9. Directional advertisements.
- Class 10. Advertisements inside buildings.
- Class 11. Advertisements for neighbourhood watch schemes.
- Class 12. Advertisements on sites used for the preceding ten years for display of advertisements without express consent.
- Class 13. Advertisements relating to an election.

4.4 The difference between these classes and the Schedule 2 exempt advertisements is that while no express consent is required, all listed classes may be removed or restricted by a direction. Under regulation 6 a council may ask the Department to direct that express consent is required before advertisements, for which deemed consent would otherwise be available, may be displayed. The effect of such a direction is that the express consent of the council is needed for the display of advertisements in that area, or in that case.

4.5 When the Department receives such a direction, notice of the direction must be published in a local newspaper and the Department’s website,
giving a full statement of the effect of the direction and naming a place where a copy of the direction maybe inspected (regulation 6(2)). When a direction is made in a particular case, notice of the direction must be served on the owner and occupier of land to which the direction relates and to anyone else whom the council knows proposes to display an advertisement of the type to which the direction relates (regulation 6(3)).

5.0 Applications for Express Consent

5.1 Under regulation 8 an application to display an advertisement must be made in writing to the appropriate council and must include the following:
(i) a written description of the advertisement to which it relates; and
(ii) the postal address of the site or a description of the location of the site; and
(iii) the name and address of the applicant and/or the name and address of an agent acting on behalf of the applicant; and
(iv) a plan sufficient to identify the site to which it relates and such other plans and drawings as are necessary to describe the advertisement.

5.2 Whilst there is no statutory requirement for a form to be used when applying for advertising consent, the use of a standard form can bring clarity and uniformity to the planning process. Councils may therefore find it beneficial to promote the use of the model advertising consent form (Form A1).¹

5.3 Before an express consent is granted a council has a duty to consult,
(a) with any neighbouring council or,
(b) where the granting of consent might affect the safety of people using any road, railway, waterway or coastal water, dock, harbour

¹ This form can be found at www.planningni.gov.uk
or aerodrome (civil or military), with the Department for Regional Development and/or the Commissioners of Irish Lights, and other responsible persons as detailed in regulation 10 and,

(c) where the application relates to an advertisement with moving features, moving parts or flashing lights, and is visible from a road, with the Department for Regional Development.

5.4 Where the council grants consent, such consent is subject to the following conditions set out in Schedule 1 of the Regulations, namely that,

i. any advertisements displayed, and any site used for the display of advertisements, shall be maintained in a clean and tidy condition to the reasonable satisfaction of the council; and

ii. any structure or hoarding erected or used principally for displaying the advertisement is maintained in a safe condition; and

iii. where an advertisement is required to be removed under these Regulations the removal shall be carried out to the reasonable satisfaction of the council; and

iv. no advertisement may be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission; and

v. no advertisement may be displayed on, or so as to obscure or hinder, the ready interpretation of any road traffic sign, railway signal or aid to navigation by water or air, or so as otherwise to render hazardous the use of any road, railway, waterway (including coastal waters) or aerodrome (civil or military).

5.5 In addition to the standard conditions, the council may on the grant of consent impose such other conditions as it thinks fit (regulation 11(1)}
(b). In particular it may impose conditions (regulation 11(3) (c));

i. for regulating the display of the permitted advertisement, and/or
ii. regulating, for the display of the advertisement, the use of the site or any adjacent land under the control of the applicant or requiring the carrying out of works on such land, and/or
iii. requiring the removal of any advertisement, or discontinuance of and land use authorized by the consent, at the end of a specified time, and undertaking reinstatement of the land.

5.6 Unless it appears to the council to be required in the interests of amenity or public safety, an express consent is not to contain any limitation or restriction relating to the subject matter, content or design of what is to be displayed (regulation 3(4)).

5.7 An application for express consent to display advertisements is required to be determined and the decision notified to the applicant, stating if applicable the reasons for refusal or for the imposition of conditions, within eight weeks unless otherwise agreed, in writing, by the applicant (regulation 13(1)). As with applications for planning permission, if the council fails to determine the application within that period, the applicant may treat the failure as a refusal and appeal to the Planning Appeals Commission (regulation 15(2)).

5.8 The power of the council to grant or refuse consent is exercisable in the interests of amenity or public safety (regulation 3(1)) taking into account the provisions of the local development plan, so far as they are material and any other relevant factors. The council is required to determine the suitability of the use of the land or building on which the advertisement is to be displayed for the display of advertisements in the light of the general characteristics of the locality (regulation 3(2) (a)) and to have regard to the safety of users of transport routes affected by the display. In particular the council must consider whether the display is likely to hinder the reading of any road traffic sign, railway sign, or
aid to navigation by water or air (regulation 3(2)(b)(ii)). The council may also have regard to any material change in circumstances likely to occur within the period for which the consent is required or granted (regulation 3(3)).

5.9 Where a council’s decision is to refuse consent or grant consent subject to conditions, the applicant may appeal to the Planning Appeals Commission (regulation 15(1)). If consent is granted on an application, the council may later revoke it or modify it (regulation 16(1)). Where consent is revoked or modified, the council is liable to pay compensation in accordance with section 26 of the Land Development Values (Compensation) Act (NI) 1965 as modified by Schedule 4 of the Advertisement Regulations. A claim for compensation must be made within six months of the revocation or modification, or such extended period as the council may allow (regulation 17(3)).
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