

AWB/CT/SAC

Ms Susan Peart
Planning System Improvement Division
Department for Communities and Local Government
Zone 3/J4
Eland House
Bressenden Place
London
SW1E 5DU

30th August 2006

Dear Ms Peart

DRAFT TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) (ENGLAND) REGULATIONS 2006 AND DRAFT CIRCULAR

This is the response from the British Sign and Graphics Association (BSGA) to your consultation on the above draft Regulations and Circular. The BSGA is a trade association representing the commercial signmaking industry in the UK.

The comments below refer to the draft Regulations. For ease of reference, our comments on the draft Circular are given in an Annex to this letter.

1.0 General

- 1.1 We are disappointed that after so many years following the original 1999 consultation the draft regulations appear, in many instances, not to carry out the stated intentions as we detail below.
- 1.2 In the draft Regulations, many paragraphs are incorrectly numbered and therefore some of the cross-references are incorrect (e.g. Regulation 1 has two paragraphs 1(1) and no 1(2) - so the cross-reference in 4(2) is correct only if the second 1(1) is re-numbered to 1(2)).

2.0 Regulation 9 (Applications for express consent)

- 2.1 In Regulation 9, there is a new requirement that the application should be accompanied by "evidence that the owner and every other person with an interest in the site consents to the application". This is of great concern. There may be many persons who hold an interest of some sort in a piece of land e.g. owners, lessees, sub-lessees, licence holders, mortgagors. The practical application of this is unknown. If this is simply translated into a tick box, as at present and as in the model application form in Draft Circular Appendix A, this will not be a problem, because the DCLG's draft Standard Application form, which is due to be compulsory in April 2007, contains only tick boxes. Perhaps this requirement should be re-drafted as "provide confirmation that the owner or other person entitled to give permission

consents to the application".

- 2.2 However, if it is the intention that every application must be accompanied by written "evidence" from all owners and others with an interest in the site, this would be wholly unworkable and would increase the cost of making any application by an incalculable amount. In effect it would involve obtaining a solicitor's Certificates of Title Report, which can cost up to £1,000, then written "evidence" from all those identified as having an interest. This far exceeds the requirements for all other forms of planning applications where, at most, the completion of a form and service of notice is required. This is wholly unnecessary. No applicant would go to the expense of an application where the owner's consent to display the advertisement is unlikely to be forthcoming; and display without the owner's consent would be against Standard Condition 1 (thus creating a criminal offence) and a trespass in common law.
- 2.3 A further new requirement in Regulation 9 is that where the site is within the boundaries of a highway, "evidence" should be provided that the application is acceptable to the highway authority. This again may create practical problems. There are plenty of instances where the highway boundary is unclear or disputed e.g. unenclosed shop forecourts. However, the considerations in paragraph 2.2 above still apply; and any dispute as to land ownership is not a matter for an advertisement application, which concerns use of land and not ownership, the latter is a matter for a different tribunal and should not be confused into a land-use based planning system.

3.0 Class 5 (Non-illuminated advertisements on business premises)

- 3.1 In Class 5(5), there is a new requirement is that no single advertisement may exceed 1.42 square metres in area. If this is meant to refer to 4-sheet posters, 1.42 square metres is incorrect. A 4-sheet poster is 5' x 4'3" or 1.52 m x 1.02 m, equating to 1.55 square metres. This is not as proposed in the consultation paper, where this proposed size limit was to relate only to poster advertising. As now drafted, it will refer to all Class 5 advertisements, e.g. fascia and board signs. Since most fascias have dimensions in excess of 3 m x 0.5 m, this would make all existing Class 5 deemed consent, after the 5 year transitional period, and new non-illuminated fascia signs unlawful, unless they have a specific grant of express consent. The increased cost to businesses, in having to replace many thousands of such inoffensive [and often historic] signs, as well as having to apply for all such signs previously within the Class 5 deemed consent provisions is again incalculable.
- 3.2 This cannot be the intention. If it remains the intention that this size limitation should apply only to poster advertising, then Class 5(5) should be amended accordingly. If it supposed to apply as drafted, we can only suggest that the policy issues in the original consultation paper be re-opened, so that the millions of shopkeepers, restaurateurs, publicans, hoteliers and industrial and office operators who will be affected can voice their objections to this proposal.

4.0 Class 6 (Advertisements on the forecourts of business premises)

- 4.1 Similar considerations apply to Class 6(5). The new requirement (as in Class 5) is that no single advertisement may exceed 1.42 square metres in area is again not as proposed in the consultation paper where this proposed size limit was to relate only to poster advertising. As now drafted, it will refer to all Class 6 advertisements, e.g. trade signs. The

same objections as above apply; and, again, the cost to business is incalculable.

4.2 We would also suggest that the size limitations in Classes 5 and 6, even if re-drafted so as to refer only to poster advertising, the stated intention, are completely unnecessary. The poster advertising industry no longer uses 4-sheet advertisements. Their requirement is for illuminated 6-sheet advertisements which can be routinely re-posted with new posters. Since Classes 5 and 6 refer only, with limited exceptions for medical purposes, to non-illuminated signs. The required illuminated panels will not fall within these Classes. Even non-illuminated 6-sheet panels, which may fall within Classes 5 and 6, are of no use to the poster industry, since Classes 5 and 6 refer only to signs which relate directly to the premises. General poster advertising is not permitted since the poster industry is unable to direct specific individual posters to specific individual premises to which they may relate the displays will not fall into these Classes.

4.3 We recognise the consultation paper's original concern that some such illuminated 6-sheet panels are erected unlawfully. The proposed changes to Classes 5 and 6 will not stop this. They will, however, have enormous and surely unintended consequences for businesses wishing legitimately to display their own identity and goods.

5.0 Class 13 (Advertisements on sites used for preceding ten years for display of advertisements without consent)

5.1 There appear to be drafting errors in both Classes 13 and 14 where "continuously" has replaced the old "continually". Yet draft Circular paragraphs 66 and 68 explain that breaks in display are permitted, as in the present Circular 5/92, so "continuously" appears to be a simple error.

5.2 The scheme of Class 13 would appear to be that it gives consent to advertisements displayed without express or deemed consent, without significant alteration, for the preceding 10 years, presumably from any date on which its lawfulness is challenged. However, certain provisions would not appear to be consistent within this drafting scheme. An advertisement displayed without express or deemed consent is unlawful. Therefore how can there be any "most recent [and lawful] display" as in Class 13(3) and (4)?

5.3 Further, the transitional provisions for this Class in Regulation 31 give a transitional period of 5 years grace for advertisements falling within the description in Class 13. However, if they fall within the description in Class 13, why do they need a transitional provision? Should Regulation 31, in column (1) of Table 2, refer to advertisements displayed in accordance with the relevant Classes in the 1992 Regulations? This would at least make some sense. However, this interpretation gives rise to a further difficulty. There will be many advertisements displayed totally unchanged since 1974, in accordance with the deemed consent under the provisions of Class 13 in the 1992 Regulations, which would appear to be excluded from the provisions of the new Class 13 which specifically states "advertisements displayed without express or deemed consent". What happens to all these long-standing and inoffensive deemed consent advertisements, must they be removed after the 5 year transitional period?

5.4 What about advertisements which have been altered in some way during the preceding 10 years, but not in a way which would put them outside the provisions of the old Class 13?

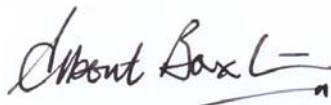
These too would still be displayed with deemed consent; yet it would appear that they are excluded from the new Class 13. If the change can be proved to date from more than 10 years ago and was material i.e. it took the display outside the old Class 13 provisions and made the display effectively unlawful, it would be admissible into the new Class 13. This is a nonsense and appears to give legality to presently unlawful displays while it excludes very many existing lawful displays.

- 5.5 A further concern in new Class 13 is 13(2) (b) and (c). This was not canvassed in the 1999 consultation paper and is not explained in the draft Circular. 13(2) (a) is repeated from Class 13 in the 1992 Regulations and has not caused any problems. It has been taken simply to be a clarification that the reconstruction of any building or structure which has been required to be removed, perhaps by an enforcement or discontinuance notice, may not, under the provisions of Class 13, be re-erected to continue the display of the advertisement. It must be read in parallel with section 222 of the Town and Country Planning Act 1990 which gives deemed planning permission for any development which is involved in the lawful display of an advertisement.
- 5.6 However, the addition of (b) and (c) would appear to provide the possibility of wide misinterpretation. Does "structure" include any structure which forms an integral part of the advertisement, e.g. the upright metal or wood supports for a forecourt trade sign on which the advertisement is set and which is there as part of the advertisement display and for no other reason? The definition of "advertisement" in section 336(1) of the Town and Country Planning Act 1990 (as amended) would tend towards an interpretation that the actual structure of the advertisement itself is part of the "advertisement" and would not be affected by the provisions of Class 13(2). We consider that some lpa's would maliciously seek to use these provisions to claim that any advertisement structure cannot be replaced or repaired even in the normal course of maintenance. We cannot see any reason for the addition of 8(2) (b) and (c).

You will appreciate from the above that the draft Partial Regulatory Impact Assessment is wildly inaccurate if the Regulations are enacted as now proposed. The outdoor advertising industry would not find the control system "more user-friendly and responsive to the legitimate interests of the industry". The contrary would be the case. Further, the cost of compliance would be astronomical, possibly running into many tens of million pounds.

In view of the exceptional consequences arising from the above, should the draft Regulations be enacted as proposed, we would seek an urgent meeting to explain more fully the detail.

Yours sincerely



Albert W Baxter
Director

Annex to letter of 30th August 2006

DRAFT CIRCULAR TO REPLACE DOE CIRCULAR 5/92

Paragraph 1

"First" Secretary of State should be corrected.

Paragraph 10

After "local planning authority", insert "or Secretary of State" (to take account of the new standard application forms to be introduced in 2007).

Paragraphs 11 and Annex Paragraph 98

These Paragraphs may need to be amended if our views on site ownership find favour. "Evidence" may need to be replaced with "confirmation" (i.e. a tick box on the application will suffice, as in the Model Application Form in Appendix A and the draft standard application form).

The reference to Regulation 9(2) (a) and following is not understood. Regulation 9(2) states "the applicant shall be taken to have agreed"; if this is not mandatory, Regulation 9(2) should read "the applicant may agree". There are no Regulations 9(2) (iii) or (iv) as referred to in the Circular.

Paragraph 12 and/or Annex Paragraph 107

Perhaps this is an appropriate place to state that where an application is declined because the lpa could not grant express consent for it, they should also refund the application fee.

Annex - the following Paragraphs refer to Annex Paragraphs

Paragraph 3

"blinds or canopies" may be usefully qualified with the addition of "which contain advertising", since plain blinds or canopies are not advertisements, but may require planning permission.

Paragraph 5

Amend "content or subject" to read "content, subject or design" to more closely follow the statutory requirement.

In the last sentence, after "controlled", insert "but only" to make it clear that such matters may only be controlled in the interests of amenity or public safety and not on any other considerations.

Paragraph 13

The last sentence could lead to significant misinterpretation. Section 222 of the 1990 Act states that "where the display of advertisements ...involves development of land." This has always been taken to include development which is proposed as ancillary to the actual advertisement display but is part of the same scheme, e.g. fencing, landscaping. This has been disputed by some (very few) lpas; but has always been accepted by the Department and, in practice, by the Planning Inspectorate. Paragraph 13 could usefully make this clear. As presently drafted, it would appear to exclude such ancillary development (which would lead to double applications for express consent for the advertisement itself and its structure and for planning permission for ancillary development, thus considerably increasing the work of, and cost to, applicants).

Paragraphs 17, 20, 22, 36, 46 and 57

In each Paragraph "in the hours of darkness" does not follow the Regulations. The Regulations only state that illumination should be "in a manner reasonably required to fulfil the purpose of the advertisement". This is not the same as the hours of darkness. The advertisement may be illuminated at any time when it is required reasonably to fulfil the purpose of the advertisement (e.g. in poor light at dawn and dusk and during dismal days). "Hours of darkness" should be amended to follow the Regulations.

Paragraphs 38 and 40

In each Paragraph, in the second sentence, before "advertisement", insert "projecting". Similar amendment should be made to the third sentence. These limitations expressly apply only to projecting advertisements, as particularly distinguished from an advertisement Parallel to a wall.

Paragraph 42

In the final sentence, "and for those in all other areas" may need to be amended should our representations on Class 5 be accepted.

Paragraph 43

At the end of the final sentence, insert "or a material alteration of a similar kind to its external appearance", to follow Paragraph 1(a) (ii) in Part 2 of Schedule 3. Otherwise, this Paragraph implies that only the addition of a shopfront would make a building qualify as "business premises".

Paragraph 46

The luminance levels have not been "relaxed". All are the same or lower than the 1992 Regulations, e.g. advertisements with a face area of less than 2 m² and more than 10m². Be honest!

Paragraphs 47 and 50

The first sentence in each Paragraph and the third sentence of Paragraph 50 will need to be amended, should our representations on Classes 5 and 6 be accepted.

Paragraph 49

In the third sentence "enclosed" should be deleted. It is misleading. The definition of "forecourt" in part 2 of Schedule 3 makes clear that a forecourt does not have to be enclosed.

Paragraph 50

In the second sentence "an advertisement on each forecourt" should be replaced by "advertisements on each forecourt". There is no limit as to number. In the third sentence "on the forecourts" should be replaced by "on each forecourt", for clarity.

Paragraph 55

The last sentence should include "area of special control". Though this is not stated in Class 8 itself, it is stated in Regulation 21(2) (e).

Paragraph 58

The final sentence is incorrect. Class 12 would apply if the structure to which the advertisement was affixed was authorised and lay within a verge or central reservation of a dual carriageway.

Paragraph 59

This could be usefully clarified by re-drafting the second sentence to read "Class 12 includes: all advertisements which are illuminated ...; and non-illuminated advertisements within one metre ..."

Paragraphs 65 and 68

"Continuously" should, in each Paragraph, be replaced by "continually", as explained in Paragraphs 66 and 68.

Paragraph 75

In the last sentence "should be avoided" should be replaced by "is not permitted". This is not advice; it is mandatory in Class 16(4).

Paragraph 76

The last sentence should be deleted. The level of illumination within a telephone kiosk is not controllable under the Control of Advertisements Regulations.

Paragraph 82

The drafting of this Paragraph implies that there are three different types of discontinuance notice. This does not follow Regulation 8. In Regulation 8, may a discontinuance notice specify "a manner, number, siting, size or illumination"? As drafted, the Paragraph does not follow the scheme of Regulation 8 and is particularly unintelligible. Without knowing what this is really meant to say, it is impossible to attempt to correct this.

Paragraph 87

"the date the notice takes effect will be the date the appeal is finally determined" is incorrect. Section 78(4) of the 1990 Act only states that "on the determination of an appeal under section 78 the Secretary of State shall give such directions as may be necessary for giving effect to his determination". The effective date of the notice will therefore be as stated in the decision on an appeal; and will not necessarily be the date of the decision.

Paragraphs 89 and 95

ODPM should be corrected.

Paragraph 90

This Paragraph could be usefully expanded to emphasise the need for up-to-date orders, as already urged by the Department. Perhaps it might add that out-of-date orders will not be afforded great weight in an appeal to the Secretary of State where they are clearly inappropriate in the circumstances of any particular case.

Paragraph 97

This Paragraph could usefully include a reference to refund of fees where the lpa decline to determine the application under Regulation 14(1) (c).

Paragraph 112

In the last sentence "should be consulted" should be replaced by "must be consulted". This is mandatory by Regulation 13(1) (e).

Paragraph 116, Paragraph 1 of Appendix C and Guidance Notes in Appendices F1, F2 and F3

This is incorrect where it refers to the period for making an appeal against a discontinuance notice. The period is any time before the notice is due to take effect under section 78(2) of the 1990 Act as amended.

Paragraph 131

In the second sentence, after "but also", insert "(with certain reservations explained below)". This will alert readers to Paragraph 132.

Paragraph 149

In the first sentence, "rural areas are usually included in areas of special control" is entirely incorrect; for example, there are no special control orders in the overwhelmingly rural areas of Suffolk or Northumberland.

Whilst "the length of the highway in the Ipas's area" might be administratively convenient, there is no legal or judicial support for this statement.

Paragraph 150

The second sentence should be re-drafted as "The Highways Agency will not support any application for an advertisement which could unduly distract drivers". This more closely follows the advice in Appendix B and PPG19. The last sentence of this Paragraph can then be deleted - public safety will have been dealt with; and amenity is not relevant to this Paragraph.

Appendix A Notes Paragraph 4

"static" ... "have moving parts" is a tautology. One or other should be deleted.

Appendix A Notes Paragraph 8

This Paragraph might usefully advise that the application fee should be refunded where the Ipa could not grant consent because of Regulation 14(1)(c).

Appendix B Paragraph 3

This Paragraph should refer to the Mayor for London rather than DTp London Regional Office; and to the Highways Agency rather than RDs (Transport).

Appendix C Paragraph 2(b) - not (g) as drafted

To be even-handed, the reference to costs should also note that an appellant's costs may be awarded against a local planning authority.