Neutral Citation Number: [2026] EWHC 2406 (Admin)

Case No: AC-2025-LON-001382

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/09/2026

Before:

THE HONOURABLE MRS JUSTICE LIEVEN

- -

Between:

KING MEDIA LIMITED **Claimant**

- and –

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

(2) LONDON BOROUGH OF HACKNEY

Defendants

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- -

Mr Gregory Jones KC and Mr Alexander Greaves (instructed by **Town Legal LLP**) for the **Claimant**
Ms Ruchi Parekh (instructed by **Government Legal Department**) for the **1st Defendant**
The 2nd Defendant did not attend and was not represented

Hearing dates: 1st & 2nd July 2026

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Approved Judgment

This judgment was handed down remotely at 11.30am on 25 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE LIEVEN

Mrs Justice Lieven:

1. This is a claim for statutory review under s. 288 of the Town and Country Planning Act 1990 ("the 1990 Act") challenging the decision dated 27 March 2025 ("the Decision") by an inspector appointed by the First Defendant ("the Inspector") to dismiss the Claimant's appeal ("the Appeal") against a discontinuance notice dated 30 August 2024 ("the DN") issued by the Second Defendant ("the Council"). Permission was granted on all grounds of challenge by Order of Lang J. dated 23 January 2026.

2. The DN was issued pursuant to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ("the Regulations").

3. The Claimant was represented by Mr Gregory Jones KC and Mr Alexander Greaves, the 1st Defendant was represented by Ms Ruchi Parekh, the 2nd Defendant did not attend and was not represented

Background

4. The DN is concerned with an advertisement displayed at 1 Great Eastern Street, Hackney, London, EC2A 3EJ ("the Site"). The advertisement is an externally illuminated mesh shroud measuring approximately 10m x 10m located on the elevation fronting Great Eastern Street ("the Advertisement").

5. The Claimant is an outdoor advertising company which holds a 15-year lease allowing it to display the Advertisement.

6. The Site is located on the southwestern corner of the junction between Great Eastern Street, Shoreditch High Street and Commercial Street, which is a major junction comprising six lanes of traffic. It is within the South Shoreditch Conservation Area ("SSCA"). The SSCA is a large conservation area comprised of four separate character areas. The Site falls within the Shoreditch High Street Character Area in the southeastern corner of the SSCA. The Site does not fall within any key views identified in the Conservation Area Appraisal. The building (1 Great Eastern Street ("1GES")) is not locally listed. It is identified in the Appraisal as one of the buildings that make a positive contribution to the SSCA. The nearest listed buildings are Grade II at No. 6-8 Great Eastern Street and 5 Fairchild Place ("the Listed Buildings").

7. The Advertisement has been in place for well over 10 years, although the precise period and its precise form over those years are not agreed. The Council first considered taking enforcement action in 2014 but determined not to do so and then reconsidered the matter in 2016. In October 2020 the Council issued a removal notice which was subsequently withdrawn.

8. On 30 July 2024 a DN was served which was withdrawn and reissued on 30 August 2024. That DN was the subject of the appeal that forms the basis of this challenge.

9. A Statement of Reasons is required by Regulation 8(3)(d) of the Regulations, to explain why substantial injury to the amenity of the locality has been caused and why it is necessary to serve the notice. The Statement of Reasons said:

> *"The local authority is satisfied that it is necessary to serve this notice to remedy a substantial injury to amenity of the locality. The advertisement's large size and prominent positioning make it an overwhelming feature, especially compared to the modest scale of the host building, which is an interesting and attractive building with fine architectural detailing. The illumination of the advertisement is overly aggressive, detracting from the appearance of the building, streetscape, and broader public realm. The advertisement severely affects the character of the building, as well as the wider area – including the conservation area – the*

appearance of which has improved significantly since the advertisement was first installed. It is substantially injurious for an advertisement to cover several floors, block windows, and obscure key features of a building at a major junction within a conservation area.

Additionally, the advertisement harms both the occupants and neighbours by significantly reducing their outlook and access to natural light while increasing artificial light pollution. It also damages designated heritage assets by introducing an incongruous and aggressive element, causing substantial harm without providing any public benefit. The fabric of the building is deteriorating, which further injures the amenity of the area, and the presence of the advertisement hard up against the façade of the building prevents proper repair and maintenance of the building."

10. The Claimant submitted an expert report and appendices from Dr Miele. Dr Miele is a heritage expert who authored the original SSCA appraisal and has considerable experience in carrying out heritage, townscape and visual impact assessments. Dr Miele's Report considered whether the Advertisement caused any harm to designated heritage assets and the host building, and whether it caused substantial injury to the amenity of the area. Dr Miele's Report concluded that:

    a. One Great Eastern Street ("1GES") is a non-designated heritage asset ("NDHA") of historical interest due to its date of construction and association with the construction of Great Eastern Street. However, it is not typical of the important buildings that served the furniture industry in the area. There would be harm to the NDHA through the concealment of its architectural features when the Advertisement is in place, but the intrinsic historic and architectural interest of the building is unaffected.

    b. There would be a low level of less than substantial harm to the SSCA due to the concealment of 1GES, which makes a positive contribution to the special architectural and historic interest of the area.

    c. There would be no harm to the significance of the Listed Buildings.

    d. The Advertisement does not cause substantial injury to the amenity of the locality.

11. Part of the Council's case concerned an allegation that the Advertisement would harm the living conditions of the occupants of 1GES *"by significantly reducing their outlook and access to natural light while increasing artificial light pollution*". Further detail was provided at para. 5.9 of the delegated report which stated:

    "…The advert has an adverse and detrimental impact on the residential properties located on the upper levels of 1 Great Eastern Street. By obscuring the windows along the principal elevation with an opaque shroud, the advert severely reduces the available outlook from the habitable dwellings and the amount of natural light into these same spaces. The cumulative impacts of the advert result in a severe reduction in amenity that does not contribute to the public realm or community wellbeing. In addition, its presence does not put people first or promote health as it results in an unacceptable reduction of daylight and sunlight levels for these habitable spaces which has a concurrent effect on the amenity of the locale."

12. On the morning of the hearing the Council accepted that there was no harm to the setting of the listed buildings. The Council's conservation officer said that the harm to the Conservation Area was at the low to medium end of less than substantial harm.

The Decision Letter

13. The Inspector sets out the background and refers to the Regulations, then at DL10-12 under "Preliminary Matters", she says:

"10. The test of "substantial injury" to the amenity of the locality is a more rigorous test than the "interests" of amenity and must be justified accordingly, as advised in PPG.

11. PPG advises that "amenity" in practice usually refers to 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. Consideration is given to characteristics of the neighbourhood such as if the locality where the advertisement is to be displayed has important scenic, historic, architectural, or cultural features, whether it is in scale and in keeping with these features.

12. The guidance goes on to state by way of example: 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."

14. At DL17 onwards the Inspector sets out her "Reasons". At DL19 she says that the whilst the site is not identified as a key view or landmark feature, "*the advertisement is undoubtedly prominent in views"*. In DL20 she says the building is identified as a positive feature in the SSCA and a building of townscape merit in the Area Action Plan. At DL22 she says that the advertisements in the area tend to be confined to street level and not to obscure architectural features, "*At the hearing, Dr Miele confirmed that he was not aware of any other directly comparable advertisements in the locality"*.

15. DL23-25, which are critical to the Inspector's reasoning, state:

"23. The Regulations state that when considering whether to serve a discontinuance notice, regard shall be had to any material change in circumstances that has occurred. Whilst the Council provided no substantive evidence to support their assertion that the appearance of the area has significantly improved since the advertisement was first installed, it was agreed that this is not a threshold test. Furthermore, I have not been provided with legal authority which supports a proposition that there needs to have been a change in circumstances to justify the service of a notice.

24. The advertisement is substantial and appears conspicuously out of scale, dominating the façade and obscuring much of the architectural detailing of the building. Not only does it undermine the contribution that the building makes to the townscape, but significantly undermines the attractive and historic nature of much of the built development nearby. Whilst I acknowledge the many existing sources of illumination, including from the offices behind, bus stops and other advertisements, the illumination in this case emphasises the scale and incongruity of the advertisement.

25. Overall, the advertisement presents as a dominant and intrusive feature in the street scene, considerably at odds with the appearance of built development in the area. For these reasons, the display of the advertisement causes harm to the character and appearance of the SCCA and substantial injury to the amenity of the locality."

16. On the impact on residential amenity, DL27-28 state:

"27. In respect of the amenity of occupants, the parties agreed that this could constitute another relevant factor (Regulation 3(1)(b)). I acknowledge the representations from occupants of two of the flats, one of whom is not a permanent resident but occupies the first floor flat from time to time.

28. However, and whilst the advertisement is not opaque, its position close to the windows is oppressive and results in a bleak outlook. Moreover, the illumination would be harmfully intrusive to occupants of the flats, particularly the first floor flat. For these reasons there is material harm to the amenity of occupants."

17. On the impact on the listed buildings, DL33-35 state:

"33. As already stated, the reasons for issuing the notice refer to damage to heritage assets (plural) and in the Council's delegated report it is stated that there is harm to the setting of the Grade II listed properties of 5 Fairchild Place and 6-8 Great Eastern Street. However, the Council did not refer to or provide any detailed assessment of such alleged harm in their statement.

34. Dr Miele in his report concluded that there was no harm to the setting of those buildings and The presence of the advertising shroud does not detract from their strong architectural character, which continues to be appreciated and communicates their special interest.

35. At the Hearing Mr Dyer confirmed that he did not consider there to be harm to the setting of those listed buildings. Accordingly, based on my observations, and in the absence of substantive contrary evidence, I have no reason to take a different view."

18. At DL36 the Inspector turns to the Human Rights Act argument and Article 1 Protocol 1 of the European Convention of Human Rights "A1P1". At DL37-38 she says;

"37. If it were accepted that the right to display (with deemed consent) the advertisement constituted a possession, then 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.

38. A discontinuance notice permissibly brings to an end activity without compensation. I acknowledge the delay between the withdrawal of the removal notice in 2021 and the issue of the notice, which the Council put down to resourcing issues, and that the Council could have taken discontinuance action as early as 2014. However, whilst delay may [my emphasis] call into question the extent of injury, that the advertisement has been in existence for many years is not a compelling argument, particularly since there is no time limit on discontinuance action"

19. She concludes on this issue at DL42-43;

"42. The appellant provided no authority to demonstrate that the discontinuance legislation is not intended to or does not strike a fair balance between the competing interests protected by A1P1, and the wider interests of the community (as well as the property rights of developers and neighbours) including the advancement of the policy aims underlying the legislation.

43. I find on this issue that the action taken by the Council was proportionate, serving a legitimate planning aim necessary in the wider public interest and did not constitute a violation of rights that may exist under A1P1."

The Legal Framework

Control of advertisements

20. Section 220 of the 1990 Act provides that regulations shall make provision for restricting or regulating the display of advertisements. Section 222 provides that planning permission is not needed for advertisements complying with the regulations. "Advertisement" is defined in section 336 of the 1990 Act. It includes any hoarding or similar structure used for the display of advertisements.

21. The relevant regulations are the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 ("the Regulations").

22. Regulation 3 provides that:

"(1) A local planning authority shall exercise its powers under these Regulations in the interests of amenity and public safety, taking into account—

(a) the provisions of the development plan, so far as they are material; and (b) any other relevant factors.

(2) Without prejudice to the generality of paragraph (1)(b)—

(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…"

23. Regulation 4 provides that no advertisement may be displayed unless deemed or express consent has been granted (subject to specified exceptions). Regulation 4(2) provides;

"(2) An advertisement to which, by virtue of regulation 1(3), Parts 2 and 3 of these Regulations do not apply may be displayed without express consent or deemed consent."

24. Regulation 6 provides for deemed consent for the display of advertisements of any class specified in Part 1 of Schedule 3, subject to specified conditions and limitations. The classes of deemed consent specified in Part 1 of Schedule 3 include Class 13:

"13. An advertisement displayed on a site that has been used continually for the preceding ten years for the display of advertisements without express consent."

25. Regulation 8 provides for the discontinuance of deemed consent, by the service of a Discontinuance Notice (DN). It materially provides that:

"(1) …the local planning authority may, if it is satisfied that it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public, serve a notice requiring the discontinuance of—

a) the display of a particular advertisement for which there is deemed consent;

or

b) the use of a particular site for the display of advertisements for which there is deemed consent…

….

(8) In considering whether to serve a discontinuance notice, the local planning authority shall have regard to any material change in circumstances that has occurred."

26. Regulation 17(3) provides for an appeal to the Secretary of State against a discontinuance notice served under Regulation 8 by applying sections 78 and 79 of the 1990 Act, subject to modifications specified in Part 5 of Schedule 4 to the Regulations.

The approach to Decision Letters

27. The general principles which a court will apply in determining a challenge under s. 288 TCPA 1990 are well established: *St Modwen Developments Ltd v SSCLG* [2017] EWCA Civ 1643, at [6].

28. The very well-established approach to the giving of reasons is set out by Lord Brown in *South Bucks DC v Porter (No 2)* [2004] 1 WLR 1953 at [36];

"36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

The Grounds

29. The Grounds divide into two parts. Grounds 1 and 2 raise issues under the Human Rights Act 1998 and the European Convention of Human Rights (ECHR). Grounds 3-5 relate to common law arguments concerning adequacy of reasons and failure to properly consider various issues. Mr Jones dealt with the domestic arguments first and I will do the same.

30. The Grounds, in the order Mr Jones argued them, are;

Common law grounds

a. Ground Four – inadequate reasons in relation to the impact on heritage assets;

    a. A failure to reach conclusions on the specific level of harm to the CA;

    b. Inconsistent conclusions in respect of the impact on listed buildings and the impact on the CA.

b. Ground Three – errors in relation to the treatment of the impact on the amenity of residents of the building.

c. Ground Five – failure to have regard to whether there had been a relevant change of circumstances in the area, under Regulation 8(8).

Human Rights Act Grounds

d. Ground One – unlawful violation of the Claimant's Article 1 Protocol 1 (A1P1) ECHR rights;

   a. Failure to determine whether the DN would result in an interference with the Claimant's possessions.

   b. Failure to have regard to relevant considerations in determining proportionality;

   c. The operation of the discontinuance provisions in regulation 8 are incompatible with the Claimant's A1P1 rights;

It should be noted that Ground One was not argued in this way, but this is how the Ground was set out in the Skeleton Argument.

e. Ground Two – failure to have regard to the Claimant's submissions on the enhanced threshold under Regulation 8 due to the absence of compensation.

Submissions and Conclusions

Ground Four (a)

31. Dr Miele had concluded that the harm to the CA was "*very limited*" and the advertisement "*causes a limited or low degree of less than substantial harm*" to the CA. The level of harm to the CA was an area of disagreement between the parties, with it being identified in the Statement of Common Ground as being an area of dispute. At the start of the hearing, the Council's conservation officer, Mr Dyer, accepted that there was no harm to the two listed buildings, which had been cited in the Council's Statement of Reasons, and said that there was a medium to low level of less than substantial harm to the CA.

32. Mr Jones submits that the degree of harm to the CA was therefore a principal important controversial issue between the parties, upon which the Inspector needed to reach a clear conclusion. Her conclusion at DL25 that the display causes harm to the CA does not provide adequate reasons.

33. He submits that the standard of reasons set out by Lord Brown in *South Bucks v Porter (no 2)* at [36] is enhanced by the Planning Practice Guidance ("PPG") on Historic Environment (para 018 revision 23/7/19), which he submits raises the standard of reasons required in cases concerning heritage assets. The PPG states;

"How can the possibility of harm to a heritage asset be assessed? What matters in assessing whether a proposal might cause harm is the impact on the significance (https://www.gov.uk/guidance/national-planning-policyframework/annex-2-glossary) of the heritage asset. As the National Planning Policy Framework makes clear, significance derives not only from a heritage asset's physical presence, but also from its setting.

Proposed development affecting a heritage asset may have no impact on its significance or may enhance its significance and therefore cause no harm to the heritage asset. Where potential harm to designated heritage assets is identified, it needs to be categorised as either less than substantial harm or substantial harm (which includes total loss) in order to identify which

policies in the National Planning Policy Framework (paragraphs 194 to 196) (https://www.gov.uk/guidance/national-planning-policyframework/16conservingand-enhancin
g-the-historic-environment#para194) apply.

Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated."
[emphasis added]

34. Mr Jones relies upon two decisions, *R (Kinsey) v London Borough of Lewisham* [2021] EWHC 1286 at [88]-[89] and *Newcastle upon Tyne CC v SSLUHC* [2023] 2 P&CR 7 at [54] for the proposition that the Inspector was under a duty to identify the level of harm to the heritage asset.

35. In *Kinsey* Lang J said;

"88. A further flaw was that the OR did not disclose the SCO's classifications of the level of harm within the category of "less than substantial harm" and instead referred to "a degree of less than substantial harm". The effect of those omissions was to downplay to Committee Members the level of heritage harm and the weight to be attached to it, as I found under Ground 2 (see paragraph 66 above).

89. I would have reached that conclusion even in the absence of the guidance in the PPG that the extent of the harm within each category should be articulated, as it may vary. The PPG is only guidance and not binding. However, where a planning officer decides to depart from national guidance, I consider that he should give reasons for doing so, especially if he is departing from the approach taken by the Council's conservation expert. I do not consider that this part of the PPG ought to be treated with "considerable caution", as suggested by Lieven J. in respect of a different part of the PPG in Solo Retail Limited v Torridge DC [2019] EWHC 489 (Admin)."

36. Ms Parekh points out that *Kinsey* concerned a situation where the reasons in issue were set out in the officer's report to members, not in a decision notice or Inspector's report. This is important because the legal issue was that members of the committee were left unclear as to what level of heritage harm their professional advisor considered arose. The effect, as found by Lang J, was to "*downplay the level of harm*". In effect members were not being properly advised, see [55(iv)]. Ms Parekh submits, and I agree, that this is a different situation from when a decision notice is setting out reasons.

37. In *Newcastle* Holgate J referred to the competing evidence on levels of harm to heritage assets at [54];

"54 It was common ground at the inquiry that any harm caused by the appeal proposal to the setting of St. Ann's Church fell into the "less than substantial harm" category in the NPPF, and not "substantial harm". But the national Planning Practice Guidance advises that the effect of harm within either category may vary and "should be clearly articulated". On that aspect, there was an issue at the inquiry.

55 When consulted by NCC on the planning application, Historic England advised that the proposed development would cause a "moderate" degree of "less than substantial harm" to the significance of the setting of the Church. NCC's witness at the public inquiry and SAQML agreed with Historic England's judgment on this point. On the other hand, EQ's case was that the development would cause a "low" level of harm, revised to no harm, to the setting of the Church (DL 67)."

38. Mr Jones submits that the reasons do not enable the Claimant to assess its prospects of obtaining some alternative development permissions, as set out in [36] of *South Bucks v Porter (No 2).*

39. In my view the Inspector's reasons were adequate and met the test in *South Bucks* at [36]. There is no enhanced duty to give reasons in respect of heritage issues. The PPG is simply setting out the *South Bucks* test, albeit in slightly different language. There is no suggestion in the PPG that it is seeking to impose a higher test of reasons in a decision engaging heritage issues. Further, it would make little sense to do so. The test of reasons in a planning decision as set out by the House of Lords in *South Bucks* has stood for many years and has been consistently followed and supported, see for example the Court of Appeal decision in *St Modwen*. It is a clearly set out and very well known test. It would be surprising if Government policy was trying to impose a higher standard of reasons upon decision makers in the heritage context, without making that absolutely clear. Further, in policy terms it would again make little sense to impose a higher standard of reasons in this particular context. Heritage decisions are necessarily important ones, but no more so in respect of their impacts on interest of acknowledged importance than many other planning decisions.

40. There is no obligation on a decision maker to set out precisely where on a scale of harm to heritage assets a particular development lies. The two cases upon which Mr Jones relies necessarily turn on their own facts and the nature of the reasons and issues that arose in those particular cases.

41. Applying the *South Bucks* test to this issue in this decision letter, DL24-25 set out the Inspector's conclusions on the impact on the CA. The principal important controversial issue was the scale of the harm to the CA. The DL sets out clear conclusions on that issue. The Inspector found that the development "*significantly undermines the attractive and historic nature of much of the built development nearby*" (DL24) and the advertisement is a "*dominant and intrusive feature… considerably at odds with the appearance of built development in the area"*. These paragraphs are clear and stark. They set out the Inspector's conclusions that the advertisement fails to preserve and enhance the CA and is a dominant and intrusive feature within the CA. Remembering that the DL is addressed to informed readers who will be familiar with both the area and the advertisement, the reasons are clear.

42. Mr Jones submits that Defendant's reliance, under the Human Rights Act arguments, on the Claimant's ability to apply for an express consent, indicates that the reasons had to give further explanation as to the level of heritage impacts. He says that this is necessary for the Claimant to assess its prospects of succeeding on an application for express consent. Again, this is to misapply the *South Bucks* test. There is no obligation on a decision maker to give guidance to a developer as to how to frame a future application. The Inspector's assessment of the level of heritage harm for the purposes of deciding whether there is a proportionate interference in any A1P1 rights, is sufficiently clear from the paragraphs of the DL set out above.

Ground Four (b)

43. Mr Jones submits that the Inspector reached inconsistent conclusions in respect of the impact on listed buildings. Dr Miele had concluded that there was no harm to the listed buildings (both intrinsically and to their setting). Mr Dyer had accepted that. The Inspector at DL35 said that she had no reason to reach a different conclusion. However, at DL24 she had found that the advertisement significantly undermines the attractive and historic nature of much of the built environment nearby. Mr Jones submits that this must include the two listed buildings, and the Inspector has therefore reached inconsistent conclusions in respect of the listed buildings. He further submits that if the Inspector was relying upon harm to other buildings in the CA, then she should have identified which buildings and given the Claimant the opportunity to respond in respect of them.

44. In my view this Ground has no merit. The impact on the setting of a listed building and the impact on the buildings (including the listed buildings) within the CA are not the same thing, although they may overlap. The setting of a listed building necessarily focuses on that specific building and what the decision maker assesses to be its setting. The Inspector accepted the agreed position, that there was no material harm to the setting of the listed buildings. However, the role that the listed buildings play in the CA, and the impact on the historic environment within the area is a different issue. It relates to the broader character of the area and the interrelationship between the various buildings and the advertisement. There is therefore nothing inconsistent about the Inspector's findings.

45. Judgements about impact on heritage assets are ones for the Inspector, who had the inestimable benefit of going on the site and seeing the relationship between the advertisement and the buildings within the area. Her conclusion at DL24 that the advertisement undermined the attractive and historic nature of much of the built environment nearby is very clear, particularly in the light of its size and prominence, referred to in DL19. Reading the DL as a whole, and taking into account the Inspector's clear conclusions on impact, her reasoning is wholly sufficient on this point.

Ground Three

46. Mr Jones submits that the Inspector erred in respect of the living conditions of the residents of the building to which the advertisement is attached. He submits, firstly, that the Inspector wrongly thought that the legal relevance of the impact of the Advertisement on the residents' amenity was agreed by the Claimant when it was not. Secondly, that the Inspector erred because she wrongly concluded that residential amenity was a relevant consideration.

47. At DL27 the Inspector said that the parties had agreed that the amenity of the occupiers could be a relevant consideration. That was the position of the Claimant (at that time the applicant) in its written submissions. However, in his oral submissions Mr Jones changed the position to argue that residential amenity was legally irrelevant.

48. He submits that the Claimant was materially prejudiced by the error, because the Inspector failed to consider the Claimant's arguments as to why residential amenity was legally irrelevant.

49. Ms Parekh does not dispute that the Inspector erred in this regard, but submits firstly that the Claimant has suffered no prejudice; secondly the Inspector was correct to find that residential amenity was a relevant consideration; and thirdly that the mistake in DL27 made no possible difference to the outcome, applying *Simplex GE (Holdings) Ltd v SSE* (1986) 57 P & CR 306

50. In my view the Claimant suffered no prejudice by reason of the Inspector's mistake as to its position. The DN set out the Council's position that there was harm to the amenity of the occupants of the building. Therefore, the Claimant had full notice of the point. The Claimant did not argue in its Statement of Case that this was an irrelevant matter, but rather submitted statements from the occupants that they were not impacted by the Advertisement.

51. The Claimant then changed its position, as it was entitled to do, and Mr Jones made submissions to the Inspector about why residential amenity was not a relevant consideration. The Inspector plainly considered it was a relevant consideration. If she was wrong on that conclusion then there would have been a legal error, see below. However, if she was correct, then the fact that she misunderstood the Claimant's position causes no prejudice to the Claimant.

52. In respect to whether or not residential amenity was a relevant consideration, I accept Ms Parekh's submission that the "*amenity of the locality*" in regulation 8(1) is capable of including

residential amenity, whether of people in buildings nearby, or directly impacted by the advertisement.

53. Regulation 8(1) is concerned with "*the amenity of the locality*". Regulation 3(2)(a) directs attention to the general characteristic of the locality. "*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. Therefore, although the Regulations appear to be primarily focused on the amenity of the area in terms of its character and visual impact, there is nothing that expressly excludes taking into account impacts on residential amenity.

54. Further, it would not be in accordance with overarching policy considerations for residential amenity to be an irrelevant consideration. The possibility that an advertisement hoarding could have a negative impact on the residential amenity of occupiers of the building is by no means an unusual or unpredictable situation. Given that the hoarding does not require separate planning consent, it would be surprising if the decision as to whether the advertisement could remain necessarily had to exclude consideration of whether residential units could be significantly impacted.

55. However, further and in any event, the evidence is clear that the Inspector's decision would have been the same with or without her conclusion on residential amenity. Therefore, the principle set out in *Simplex GE v SSE* (1986] 57 P&CR 306 applies. This is apparent from the DL as a whole, where the conclusions on the impact on the CA at DL24-25 are in such clear and unequivocal terms that there is no possibility that a different overall conclusion would have been reached if the impact on residential amenity was excluded.

56. Further, this is strongly supported by the Costs Decision Letter (CDL) where the Inspector says at CDL19;

> *"19. I concluded that the harm to visual amenity and the SCCA alone causes substantial injury to amenity, and I agreed with the Council in respect of the harm to the amenity of occupants and matters relating to the repair and maintenance of the building. It was not unreasonable of the Council to find that the cumulative effect of each identified impact led to substantial injury to amenity."*

57. For all these reasons this Ground fails.

Ground Five

58. The Claimant argues that the Inspector was required under Regulation 8(8), but failed, to determine whether or not there was a material change in the area at the time of the DN. Regulation 8(8) is not clear as to what timescale the change is intended to relate to, nor the relevance of whatever change is found.

59. The evidence in relation to this Ground is somewhat confusing because both parties were arguing that there was a material change to the area, but they each relied on different changes. Dr Miele argued that the area had become a vibrant IT and design hub and that was now an integral part of its character, making the advertisement an appropriate feature. The Council pointed to the general improvement to the streetscape and urban environment, to suggest that a large, illuminated advertisement hoarding was not in keeping with the improved area.

60. Mr Jones submits that whether or not there was a material change to the area was a mandatory material consideration under Regulation 8(8). The Inspector's failure to make a finding on this issue shows a lack of adequate reasons.

61. The starting point on this Ground is that a material change to the area is not a gateway test or requirement for the service of DN. That is plain from the words of the Regulation.

62. Reading the DL fairly and as a whole it is apparent that the Inspector did consider the issue of whether there had been a material change in terms of improvement to the area. She expressly addresses this at DL23 and said that the Council had not produced any substantive evidence to support their argument.

63. She therefore had regard to the Regulation and reached a conclusion on the Council's case. She rightly said that this was not a gateway requirement. In terms of Dr Miele's argument that the advertisement was in keeping with the vibrancy of the area, the Inspector has unequivocally rejected this argument at DL24-25. She is quite clear in these paragraphs that the advertisement is out of keeping with the character of the area, which is what she needed to consider.

64. This Ground therefore has no merit. The Inspector appropriately took the issue into account.

Human Rights Act 1998 - Article 1 Protocol 1

65. Article 1 Protocol 1 (A1P1) of the European Convention on Human Rights (ECHR) states;

"17. Article 1 of the first Protocol ("A1P1") to the Convention provides:

> *"(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *(2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.""*

66. Mr Jones submits that the Inspector failed to properly consider whether the interference/deprivation of the Claimant's possession, namely the deemed consent, was proportionate within the meaning of A1P1. He focuses primarily on the lack of compensation for the interference, the nature of that interference and the delay that has occurred in serving the DN. As part of his case under A1P1 he submits that Regulation 8 is inconsistent with the ECHR because of the lack of compensation for the removal of deemed consent by reason of the service of a DN.

67. The following issues arise under A1P1;

a. Whether the deemed consent is a possession within the meaning of A1P1;

b. Whether the absence of compensation for the effect of the DN leads to a breach of A1P1;

c. The nature of the possession and of the DN;

d. The standard of review in a challenge to the proportionality of the Inspector's decision to uphold the DN;

e. Whether on the facts of the case the decision to uphold the DN was disproportionate and led to a breach of A1P1.

68. The overarching approach to A1P1 is well established and was explained by the Supreme Court in *R (Mott) v Environment Agency* [2018] 1 WLR 1022 at [18];

> *"18. The general principles governing the interpretation of A1P1 are well established in European and domestic authorities. In Back v Finland (2004) 40 EHRR 48 the Strasbourg court explained that it comprises "three distinct rules": the first (in the first sentence of para 52) is "of a general nature and enunciates the principle of peaceful enjoyment of property"; the second (in the second sentence of the same paragraph) covers "deprivation of possessions and makes it subject to certain conditions"; the third (in the second paragraph) concerns the right of the state to "control the use of property in accordance with the general interest". The court added:*
>
> > *"The three rules are not 'distinct' in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule. Each of the two forms of interference defined must comply with the principle of lawfulness and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised.""*

69. The first issue is whether the deemed consent is a possession within the meaning of A1P1. The deemed consent is not personal to the Claimant, and the leasehold interest can be transferred to a third party for valuable consideration with the benefit of the deemed consent. In those circumstances I suggested to the parties that the Court should proceed on the basis that the consent was a possession within the meaning of A1P1, without having to formally determine the issue. This was the approach taken by Kenneth Parker QC sitting as a Deputy High Court Judge in *R (Nicholds) Security Industry Authority* [2007] 1 WLR 2067. Ms Parekh accepted this approach whilst reserving the Defendant's position if the matter went further. This judgment therefore assumes that the benefit of the deemed consent is a possession within the meaning of A1P1.

70. Mr Jones' submissions fell under two broad headings. Firstly, he argues that the removal of a deemed consent by a DN under regulation 8 without compensation is incompatible with A1P1. Secondly, he submits that the decision itself was not proportionate, because the Inspector did not properly consider the impact upon the Claimant, and thus there was a breach of A1P1.

71. The degree to which the absence of compensation leads to a breach of A1P1 is intensely fact and context specific, turning on the nature of the deprivation, the nature of the right and other relevant factual circumstances, see for example, *R (Mott) v Environment Agency* [2018] 1 WLR 1022 at [32]-[37].

72. In *Former King of Greece v Greece* (App no 25701/94) at [89], the ECtHR said;

> *"89. An interference with the peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no.52, p. 26, § 69). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see the Pressos Compania Naviera S.A. and Others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 23, § 38)."*

73. Mr Jones submits the Inspector failed to consider the proper starting point, which is that there needs to be exceptional circumstances before a deprivation without compensation can be

proportionate.

74. Mr Jones relies on the ECtHR decision in *Pannon Plakat v Hungary* (39859/14) where the Court found a breach of A1P1 by the Hungarian Government's decision to remove the lawful right to display advertisements without any scheme of compensation. He submits that the case has a number of similarities to the present and relies upon [58];

> *"58. In sum, having regard to the partly retroactive nature of the impugned measure, its unexpected nature, the short transitory period, the lack of any compensatory scheme and the importance that the extinguished business activity had for the applicant companies, the Court concludes – even bearing in mind the wide margin of appreciation afforded to the State in this type of policies and the importance of road traffic safety – that the interference with the applicant companies' rights was disproportionate to the aim pursued and that they had to bear an individual and excessive burden. A disproportionate measure, especially without any scheme of compensation, does not satisfy the requirements of the protection of possessions under Article 1 of Protocol No. 1 (see, mutatis mutandis, Vékony, cited above, § 35, and Valle Pierimpiè Società Agricola S.P.A. v. Italy, no. 46154/11, §§ 74-77, 23 September 2014)"*

75. However, in my view this case is a good example of why it is necessary to read judgments as a whole and consider their context. It is apparent that there were a number of factors in *Pannon Plakat* that led the ECtHR to conclude that there had been a breach of A1P1. The lack of compensation alone was by no means determinative of the issue. The Applicants' case in *Pannon Plakat* was that they were being treated arbitrarily, pointing to the comparison with a government supported company, see [36] and that there was no evidence to support the alleged "legitimate aim" of impact on road safety. The lack of compensation was merely one of many factors in determining whether a fair balance had been applied.

76. This approach is wholly consistent with *R (Mott) v Environment Agency* [2018] 1 WLR 1022 where the Supreme Court was considering a measure that restricted 95% of the Appellant's fishing rights on the River Severn. At [36]-[37] Lord Carnwath said;

> *"36 Against that background I am unable to fault the judge's analysis of the applicable legal principles in this case. As already noted, he did not find it necessary to categorise the measure as either expropriation or control. It was enough that it "eliminated at least 95% of the benefit of the right", thus making it "closer to deprivation than mere control". This was clearly relevant to the "fair balance". Yet the Agency had given no consideration to the particular impact on his livelihood. The impact was exacerbated because the method chosen meant that by far the greatest impact fell on him, as compared to others whose use may have been only for leisure purposes. Indeed the judge might have gone further. He thought that the lease might have retained "some small value" if sold for leisure rather than commercial use. However, as Mr Hockman pointed out, even that is doubtful given the strict limits in the lease on the power to assign.*
>
> *37 I would therefore uphold the decision of the courts below. In doing so, I would emphasise that this was an exceptional case on the facts, because of the severity and the disproportion (as compared to others) of the impact on Mr Mott. As the Strasbourg cases show, the national authorities have a wide margin of discretion in the imposition of necessary environmental controls, and A1P1 gives no general expectation of compensation for adverse effects. Furthermore, where (unlike this case) the authorities have given proper consideration to the issues of fair balance, the courts should give weight to their assessment."*

77. Therefore, in *Mott* the absence of compensation was again one of the factors that led to the conclusion that the interference with the Claimant's possession of the fishing licence was disproportionate and thus in breach of A1P1. It is apparent from this passage that at least as

great a factor was the disproportionate impact of the decision on Mr Mott as opposed to others with fishing licences.

78. Therefore, neither the ECtHR nor the domestic caselaw establishes an absolute rule that compensation is required where the benefit of a possession is removed. It is necessary to consider all the factual and legal circumstances, as well as the broad policy context.

79. Mr Jones submits that the closer the interference is to the core of the right in A1P1 the higher the level of protection given by the Convention. The interference here, through the service of the DN, he says, goes to the heart of the Claimant's right. In effect it removes the right to benefit from the possession, and is not a mere restriction on that right. The evidence of Ashley Smatt of the Claimant company indicates that the advertisement generates £100,000s per annum to the Claimant and therefore it has been deprived of an extremely valuable possession.

80. The deemed consent here has been acquired by use of the site over a prolonged period and therefore, Mr Jones says, is akin to a lawful use right, see *LB of Hackney v JC Decaux* [2022] EWHC 2621 at [50]. There is a stark contrast with other areas of planning control where if a lawful right to use land is removed there is provision for compensation.

81. The legal effect of a Discontinuance Notice under the Regulations has been considered by the Court of Appeal in two cases. In *Putney Bridge Approach Ltd v SSHCLG* [2018] 9 PTSR 1431 a DN was served under regulation 8(1)(b) of the Regulations. The Claimant argued that the effect of the DN under regulation 8(1)(b) was that it was inevitable that there would be substantial injury from removal of the ability to display any advertisement at the site, see [17]-[19]. Coulson LJ disagreed and said;

"17. What lay at the heart of Mr Edwards QC's case about Regulation 8(1)(b) was the proposition that, for a DN under Regulation 8(1)(b) to be valid, the LPA had to be satisfied that the substantial injury would be, to all intents and purposes, inevitable: that no alternative size, location, or type of advertisement of the relevant category or categories at the site (whether expressly identified by the owner or not) could avoid substantial injury to the amenity of the locality. In effect, his submission was that, if the LPA could not satisfy itself that no hypothetical advertisement might remedy the injury to amenity, the LPA's concern should be dealt with by a DN under Regulation 8(1)(a) only.

18. Mr Buley submitted that such an interpretation would render Regulation 8(1)(b) empty in practical terms. It would mean that it would only be on the rarest occasions that the LPA could serve a valid DN under that provision, because it would only be on the rarest occasions that they could be satisfied that any kind of advertisement of the relevant category on the site, no matter how big or how small, and no matter what form it took, would inevitably cause a substantial injury to the amenity of the locality such as to justify a DN relating to the site as a whole. Mr Buley submitted that it could not be the intention of the Regulation to work that way and that, as a matter of construction, Regulation 8(1)(b) did not require the LPA to go that far. He said that, on the basis of the words in Regulation 8, if the LPA identified an inherent likelihood of substantial injury to amenity caused by advertisements on a particular site, rather than injury caused by a particular advertisement, then a DN under Regulation 8(1)(b) was justified.

19. As a matter of interpretation, I consider that Mr Buley's submissions are correct. The straightforward distinction in Regulation 8 is between a particular advertisement (8(1)(b)) on the one hand, and a particular site (8(1)(b)), on the other. If the LPA reasonably conclude that there is or is likely to be a substantial injury to the amenity of the locality, caused not by a particular advertisement, but the use of a particular site for the display of advertisements of the relevant category, then a valid DN can be served under Regulation 8(1)(b). In addition, I

consider that the LPA is not required to consider every hypothetical advertisement that might be put up on the site before reaching this conclusion, a point to which I return in greater detail in paragraphs 27-35 below."

82. In *City Outdoor Media v SSHCLG* [2026] EWCA Civ 829 the Claimant was arguing that any application for express consent following the service of a DN was bound to fail, see [2]. Dove LJ considered the impact of a DN and the options that existed for the holder of the deemed consent and said at [29]-[30];

"29. I am unpersuaded that a requirement to consider the impact of the removal of the rights in relation to deemed consents should be implied into the test provided by regulation 8(1). The language of the regulation is clear, and this suggested implication would effectively write words into the statutory language. It amounts to an unwarranted gloss on a test which is otherwise clearly spelt out in the terms of the regulation. This conclusion is not in my view especially surprising or, as the appellant would have it, draconian. There are useful points of context to be noted. The first point of context to note in this connection is that when a DN is served, it is uncontroversial that the recipient of the notice has the opportunity to make an application for express consent for the display of an advertisement that may have fallen within one of the deemed categories which has been discontinued. The local planning authority will then have the power to grant such an application if appropriate. Whilst the existence of a DN on the site will be a material consideration I am unable to accept the notion that it would be dispositive of the merits of any application for express consent for an advertisement display which, but for the DN, would be entitled to deemed consent. The local planning authority will have to examine all of the merits of any such application and, applying the relevant statutory test, will determine whether consent should be granted.

30. An additional piece of context is that it is a feature of development control regulation that it can contain the power for local planning authorities to remove rights to undertake forms of development, requiring a specific application for such forms of development and the express approval of the local planning authority. An example is provided by Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 which empowers the Secretary of State to make a direction that development permitted by Article 3 of the 2015 Order cannot be carried out unless express permission is granted for it. The Secretary of State must be satisfied that it is expedient to make such a direction in order for the power to be exercised. The making of an Article 4 direction does not preclude any development that would have previously been permitted development, rather it provides the local planning authority with control over whether any such development should be permitted. The making of a DN is analogous, if not precisely similar, in its effect."

83. Ms Parekh relies upon this passage, and in particular that the removal of a deemed consent is analogous to the making of an Article 4 Direction under the General Permitted Development Order, by which an applicant permitted development rights are removed, and they have to make an express application for planning permission. Under the statutory scheme there is only a limited right to compensation under s.108 TCPA 1990 by reason of the fact that what had been permitted development rights have been removed.

84. On the approach to determining the proportionality of the interference, Mr Jones submits that it is for the Court to itself undertake the proportionality balance, relying upon the Supreme Court decision in *Shvidler v SSFCDA* [2026] UKSC 30.

85. Lord Sales and Lady Rose said at [120]- [125];

"*120. The Court of Appeal stated the law in relation to assessment of proportionality correctly. It is well established that the court has to make its own assessment whether a measure is*

proportionate to a legitimate aim. If a measure is not proportionate to a legitimate aim, it will be incompatible with the relevant Convention right and its adoption by the relevant public authority will be unlawful as contrary to section 6(1) of the HRA. The question of whether the action taken by the public authority is lawful or not is what the court has to decide on a challenge. As Singh LJ put it in his judgment (para 11), citing Belfast City Council v Miss Behavin' Ltd [2007] 1 WLR 1420 ("Miss Behavin' Ltd"), paras 13—15, the question whether an act is incompatible with a Convention right is a question of substance for the court itself to decide; the court's function is not the conventional one in public law of reviewing the process by which a public authority reached its decision. As Lord Hoffmann explained in Miss Behavin' Ltd (para 15), the question is whether there has actually been a violation of Convention rights "and not whether the decision-maker properly considered the question of whether [the applicant's] rights would be violated or not". Other recent authorities which make this point include R (Begum) v Special Immigration Appeals Commission [2021] AC 765, para 69, and R (AAA (Syria)) v Secretary of State for the Home Department [2023] 1 WLR 4433 ("AAA (Syria)"), paras 56—57 and 71. In this sense, it can be said that the court's function is not merely a secondary, reviewing, function dependent on establishing that the primary decision-maker misdirected itself or acted irrationally or was guilty of procedural impropriety.

121 However, in a challenge based on Convention rights under the HRA to action by a public authority, it is not accurate to say that the court becomes the primary decision-maker in the full sense of that term: see R (Daly) v Secretary of State for the Home Department [2001] 2 AC 532 ("Daly"), paras 26—28; Huang, para 13 ("although the Convention calls for a more exacting standard of review, it remains the case that the judge is not the primary decision-maker"); Bank Mellat, para 21 (Lord Sumption) and paras 70—71 (Lord Reed: "The intensity of review varies considerably according to the right in issue and the context in which the question arises"); R (Lord Carlile of Berriew) v Secretary of State for the Home Department [2015] AC 945 ("Lord Carlile"), paras 20, 22, 31 and 34 (Lord Sumption: "no review, however intense, can entitle the court to substitute its own decision for that of the constitutional decision-maker"; "a court of review does not usurp the function of the decision-maker, even when Convention rights are engaged"). The court's role is to assess the lawfulness of the authority's action against the substantive legal criteria which are inherent in the Convention rights, including the criterion of proportionality. The public authority decides on the action it will take, and hence is the primary decision-maker; but the court makes its own assessment whether such action is proportionate, and hence lawful, or not.

122 Accordingly, although the court will have regard to and may afford a measure of respect to the balance of rights and interests struck by the public authority in assessing whether the test at stage (iv) is satisfied, it will not treat itself as bound by the decision of the public authority subject only to review according to the rationality standard: see A v Secretary of State for the Home Department [2005] 2 AC 68 ("the Belmarsh case"), paras 40—42 and 44 (per Lord Bingham, with whom a majority of the nine-member appellate committee agreed); Huang, para 11; R (SB) v Governors of Denbigh High School [2007] 1 AC 100, paras 29—31 (Lord Bingham) and 68 (Lord Hoffmann); Aguilar Quila, paras 46 (Lord Wilson), 61 (Baroness Hale) and 91 (Lord Brown) (Lord Phillips and Lord Clarke agreed with Lord Wilson and Baroness Hale); Bank Mellat, para 124 (Lord Reed); and In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill [2023] AC 505 ("Safe Access Zones"), paras 30—32 (Lord Reed). This reflects the features that the Convention rights are free-standing rights enacted by Parliament to be policed by the courts, that they are in the form of rights which are enforced by the European Court of Human Rights on a substantive basis rather than purely as a matter of review according to a rationality standard, and that the question whether a measure is proportionate or not involves a more searching investigation than application of the rationality test. Thus, in relation to the test of proportionality stricto sensu, even if the relevant decision-maker has had regard to all relevant factors and has reached a decision which cannot be said to be irrational, it remains open to the court to conclude that the measure in question fails to strike a fair balance and is disproportionate.

> *123 This account explains how it is that, in the context of the proportionality assessment to be carried out by the court, there is room for appropriate respect and weight to be given to the views of the executive or the legislature as to how the balance between the interests of the individual and of the general community should be struck, depending on the nature of those respective interests. This too is a point which has been made many times at the highest level: see, in particular, Bank Mellat, para 21 (Lord Sumption: in the area of judgments in respect of foreign policy and national security involved in that case, the nature of the issue required the executive to be allowed "a large margin of judgment") and para 98 (Lord Reed); Lord Carlile, paras 20—34 (Lord Sumption), para 68 (Lord Neuberger) and para 88 (Baroness Hale); and U3 v Secretary of State for the Home Department [2025] AC 1510 ("U3"), paras 65—82 and 94—107 (Lord Reed). As Lord Sumption said in Lord Carlile, para 34, "the court is entitled to attach special weight to the judgments and assessments of a primary decision-maker with special institutional competence" (and, we would add, is required to do so).*
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> *124 We endorse the statement of the proper approach to a proportionality assessment given by Singh LJ in his judgment at paras 11—21, drawing on an uncontroversial part of the judgment of Lord Sales in Director of Public Prosecutions v Ziegler [2022] AC 408 ("Ziegler"), para 130, and some of the authorities referred to above. As Singh LJ said (para 21), reflecting Lord Sumption's observations in Lord Carlile, para 34, the context relevant to determining the measure of respect to the balance of rights and interests struck by a public authority will include the importance of the right, the degree of interference and the extent to which the courts are more or less well placed to adjudicate, on grounds of relative institutional expertise and democratic accountability.*
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> *125 It is fair to say that this approach to the assessment of proportionality, bringing into account as it does the respective constitutional responsibilities of the courts and the public authority whose actions are under challenge and their respective institutional competencies, and involving a spectrum between elements of substantive decision-making and elements of review on the part of the courts, can on occasion lead even experienced judges into error. In the Shvidler case the Court of Appeal concluded that Garnham J had erred by leaning too far towards a form of rationality review, thereby suggesting that he had not carried out the substantive review of proportionality required for the proper application of article 8 and A1P1. A judge conducting a proportionality assessment needs to take care in the language they use to explain how they have approached the task overall and also their consideration of the particular elements which are relevant to that assessment. It is to be hoped that the recapitulation of the proper approach in this section of our judgment will provide clear guidance"*
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> [emphasis added]

86. Mr Jones argues that because there is a particular difficulty in a case such as this, where the proportionality balance necessarily is impacted by factors that a judge in the Administrative Court is poorly placed to consider, namely the impact on the local character of the area, that the Court should tend to quash and remit the matter to a fresh inspector.

87. In my view that approach would fail to accord with the view of the Supreme Court in *Shvidler* in the passages underlined above at [123]-[124] and with the long standing approach to planning decisions in challenges concerning proportionality under the ECHR. As the Grand Chamber held in *Chapman v United Kingdom* (2001) 33 E.H.R.R. 18, in a planning decision the bar for interference by a court on proportionality grounds is very high:

> *"[92] The judgment in any particular case by the national authorities that there are legitimate planning objections to a particular use of a site is one which the Court is not well equipped to challenge. It cannot visit each site to assess the impact of a particular proposal on a particular area in terms of impact on beauty, traffic conditions, sewerage and water facilities, educational facilities, medical facilities, employment opportunities and so on. Because planning inspectors visit the site, hear the arguments on all sides and allow examination of witnesses, they are better situated than the Court to weigh the arguments. Hence, as the Court observed in* Buckley*, "in so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation", although it remains open to the Court to conclude that there has been a manifest error of appreciation by the national authorities."*

88. This is effectively the same point as is made in *Shvidle*r at [124]. The courts are not well placed in a planning dispute, particularly one which involves consideration of impacts on the character of the local area where the inspector is both an expert tribunal and has been on the site and can assess the level of the impact with their own eyes.

89. Mr Jones submits that the Inspector failed to properly consider the impact of the delay by the Council in taking action upon the Claimant's rights. He relies upon *Beyeler v Italy* [2003] EHRR 5 at [120] where the ECtHR referred to the delay in taking action going to the proportionality of the deprivation:

> *"120. The Court considers that the Government have failed to give a convincing explanation as to why the Italian authorities had not acted at the beginning of 1984 in the same manner as they acted in 1988, regard being had in particular to the fact that, under section 61(2) of Law no. 1089 of 1939 (see paragraph 69 above), they could have intervened at any time from the end of 1983 onwards and in respect of anyone "in possession" of the property (and thus without needing first to determine who the owner of the painting was). That is, moreover, apparent from the judgment of the Court of Cassation of 16 November 1995 (see paragraph 63 above). Thus, taking punitive action in 1988 on the ground that the applicant had made an incomplete declaration, a fact of which the authorities had become aware almost five years earlier, hardly seems justified. In that connection it should be stressed that where an issue in the general interest is at stake it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency."*

90. However, I note that in *Beyeler* one consequence of the delay was that it allowed the Italian state to purchase the painting well below its market value, see [121]. No such consequence follows here.

91. Mr Jones argues that the delay of over 10 years in taking enforcement action called into question the public interest in taking enforcement action at all and showed an inconsistency with not pursuing action earlier. He further submits that the delay has the consequence of making it impossible for the Claimant to organise its affairs and plan for its financial future, because of the level of uncertainty caused. Therefore, the delay in taking action has been prejudicial to the Claimant. For these reasons delay is a factor in the conclusion that the interference is in breach of A1P1.

92. Ground 2 appears to be wholly parasitic upon Ground 1.

Conclusions on A1P1

93. The absence of compensation for the deprivation of a possession within the meaning of A1P1 is not determinative of the question of whether there is a breach of the Article. The caselaw makes clear that even where no compensation is payable the interference in question may be proportionate, see *Mott* at [37], "*...A1P1 gives no general expectation of compensation for*

adverse effects". As appears from *Mott* and the other cases referred to above, it is therefore necessary to consider the entire context, including the nature of the possession in issue, and the form of the deprivation.

94. In the *King of Greece* case the possession was outright ownership of real property and the deprivation was absolute. It is therefore hardly surprising that the ECtHR considered that there needed to be exceptional circumstances to justify such a deprivation.

95. The approach that the Court should take to the question of justification and proportionality is as set out in *Shvidler* and *Chapman*. The decision as to whether the interference is proportionate is one for the Court, see *Shvidler* at [122]. However, in making that assessment appropriate respect and weight can be given to the Executive (here the Inspector), depending on the nature of the respective interests, see [123]. That entirely accords with the long accepted approach in challenges to planning decisions as set out in *Chapman* that due deference should be given to the planning decision maker.

96. In the present context very significant respect and weight should be given to the Inspector's conclusion, both because she is an expert tribunal in the field of town planning, but also because she visited the site and saw the advertisement in its physical context. She is therefore in a very significantly better position to undertake the assessment required than is the Court.

97. The Inspector considered the Human Rights arguments at DL37-43, including the Claimant's submission that the absence of compensation led to a breach of the Convention. Therefore, she took into account, and gave reasons for rejecting, the Claimant's argument.

98. Her conclusion that the absence of compensation did not lead to a breach of the Convention is in my view correct. There are two critical distinctions between the current case and that of the *King of Greece*. Firstly, the nature of the possession is materially different from that in the former case. Rather than being absolute ownership of property, it is a deemed consent which was always subject to the regulatory scheme, including the potential for a Discontinuance Notice to be served. I agree with the Court of Appeal in *City Outdoor Media* that there is some analogy with the removal of Permitted Development rights, which carry only a limited right to compensation. Therefore, although I have accepted that it is a possession for the purposes of A1P1, it is of a very different character to the possessions in issue in *King of Greece*.

99. Further, the deprivation itself is different because there remains the possibility of applying for express consent, as was explained in *City Outdoor Media*. The Claimant can make such an application, and the Council will have to consider whether an advertisement in different form may be acceptable. This is therefore not a full and outright deprivation.

100. Considering the broader context, the justification for the deprivation is the protection of the environment, and *Mott* explains that this is a very weighty matter, see [33]. In the present case the Inspector reached very clear conclusions about the level of harm caused by the advertisement to the environment, in particular to the SSCA, at DL24 and 25. Again, this context is very different from the *King of Greece* case. The fact that the justification for the deprivation is environmental harm, as found by an independent inspector, is entirely different from the justification asserted in the *King of Greece* case.

101. Mr Jones suggests that there are no other areas of Planning regulation where a right such as this can be removed without compensation. Ms Parekh did not point the Court to any comparable provisions. However, taking the overarching scheme, I do not consider that the removal of a limited right such as deemed consent to display an advertisement, which has been found to be harmful to the local environment, and which carries a right of appeal, leads to a legal requirement under A1P1 for compensation. Therefore, Mr Jones' argument that Regulation 8 is inconsistent with A1P1 must fail.

102. On the facts of the particular case there are no additional factors, such as the apparently arbitrary approach in *Pannon Plakat*, which would support a finding of lack of justification. The Defendant has applied a long established regulatory scheme, which the Claimant will have been well aware of when acquiring the possession, in a transparent and Article 6 compliant manner.

103. There was some suggestion that the Council had pursued action against this advertisement rather than others. However, this was not advanced in any detail either before the Inspector or the court. In any event, given the scale, prominence and impact of the Advertisement, as found by the Inspector, there was nothing supporting a finding of an unfair or arbitrary approach, comparable to that in *Pannon Plakat*, in the present case.

104. For all those reasons I reject the argument that the decision was disproportionate because of the lack of compensation.

105. I do not consider that the delay in serving the DN can itself make the decision disproportionate. The reality is that the delay has been largely to the Claimant's benefit because it has been able to draw very considerable income from the display of the advertisement throughout that time. The position is wholly different from *Beyeler* where the delay was to the benefit of the State authority by reducing the compensation payable.

106. To the degree that the delay has led to uncertainty which has made it more difficult for the Claimant to manage its affairs, that is a minor issue compared with the financial benefit which has accrued to it.

107. Ground Two is merely a repeat of the principle argument under Ground One, that the lack of compensation makes the decision incompatible with A1P1. It raises no separate issue.

108. For all these reasons I dismiss the application for statutory review.