

10 August 2010

Roger Dowty Esq
Design and Conservation Manager
Brighton and Hove City Council
Town Hall
Norton Road
Hove
BN3 3BQ

Our Ref: APP/Q1445/REG7/09/05
Your Ref: C&R/RD/

Dear Mr Dowty,

**TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS)
(ENGLAND) REGULATIONS 2007: (“the Regulations”)
REGULATION 7: DIRECTION RESTRICTING DEEMED CONSENT**

1. I am directed by the Secretary of State to refer to the requests made by Brighton and Hove City Council (“the Council”) on 8 July 2009 and 16 July for two Directions that deemed consent for the display of estate agents’ residential sales and letting boards which are advertisements within Schedule 3, Part 1, Class 3A of the Regulations should not apply within certain areas of Brighton and Hove.

2. The first proposed Direction would cover, for an indefinite period, four historic areas within Brighton and Hove. These areas had been covered by an earlier Direction which took effect on 22 October 2004 and expired on 22 October 2009. The area comprises Adelaide Crescent, Palmeira Square, 7 to 33 (odd) Church Road (otherwise known as 7 Rochester Mansions, 9-15 & 25-33 Palmeira Mansions and 17-23 Palmeira Avenue Mansions), Brunswick Place, Brunswick Square, Brunswick Terrace, Arundel Terrace, Chichester Terrace, Lewes Crescent, Sussex Square, Montpelier Crescent and Vernon Terrace.

3. The second proposed Direction would cover, for an indefinite period, the central conservation areas in Brighton and Hove: The Avenues, Brunswick Town, Cliftonville, College, Denmark Villas, The Drive, East Cliff, Hove Station, Kemp Town, Montpelier & Clifton Hill, Old Hove, Old Town, Regency Square, Valley Gardens, North Laine, West Hill, and the Willett Estate; areas which collectively contain land bounded by Hove Street and Sackville Road, Hove to the west, by Arundel Place, Brighton to the east, by Hove Station, Cromwell Road and Lansdowne Road, Hove and by Seven Dials, Chatham Place, Brighton Station, Trafalgar Street, St Peter’s Place, Park Crescent, Edward Street, Canning Street,

Eastern Road and Bristol Gardens, Brighton to the north, and by the coastline to the south.

4. The Council's request for the new Directions were publicly advertised in the local press and in the London Gazette on 3 and 4 September 2009 respectively. The Secretary of State received 71 responses. A hearing into the second proposed Direction was held on 9 March 2010. The Brighton and Hove Estate Agents' Association (BHEAA) was represented at the hearing. It considered the large area to be covered by the proposed Direction would have harmful effects on estate agents in Brighton and proposed a limited Direction that would cover approximately 10-15% of the area to be covered by the council's proposals along with a voluntary code in the areas outside their proposal. The British Sign and Graphics Association (BSGA) wrote to oppose the proposed Direction for the same reason as the BHEAA. They also pointed out that in other cities Regulation 7 Directions were not so harsh as the Council's proposal and they considered that robust enforcement and a number of well publicised prosecutions would deter others from breaking the law. Five people spoke at the hearing in support of the Direction: all acknowledged that the voluntary code was not working and that the high quality of many of the streets was being eroded as a result of the numbers of estate agents' boards on display at any one time. Consideration has also been given to the report of the Secretary of State's Inspector Simon Hand and to the responses received to the CLG letter of 18 May 2010 which notified the Council and those who had made representations concerning the proposed Directions about the Secretary of State's proposal to modify the area set out by the Council in their proposal and to provide for one Direction covering the area set out in the first proposed Direction and most of the area set out in the second proposed Direction.

The Council's reasons for making the application

5. According to the Council, the Conservation Areas to be covered by the proposed Directions are all those where houses in multiple occupation and flats predominate. They also contain the best Regency and Victorian architecture in Brighton. Many of the Conservation Areas are set out in a grid pattern, with long straight streets that terminate at the sea and the terraced houses and closely-built villas that line those streets are particularly vulnerable to aesthetic harm from a rash of estate agents' boards.

6. The original houses are typically of 3 or 4 storeys, and where the houses have been converted and the voluntary agreement to control the display of boards is not effective, several boards which relate to different flats can be displayed outside a single property. In some cases, vendors will instruct several estate agents for the same flat, all of whom will place a board outside. These boards can also be displayed for a considerable length of time, and then the 'for sale' or 'let' signs are replaced by 'sold by' or 'let by' signs. These can be retained long after the purchase or let is completed, solely for marketing purposes. The effect of this, on a long straight street, is for a forest of boards to clutter the front gardens, or in many cases the railings that separate the houses from the pavement. In the Council's view this severely detracts from the quality of the architecture and harms the character and appearance of the Conservation Area.

7. Although the previous Direction covered specific streets, the Council considered that any extension should be to whole Conservation Areas. Their view is that an extension along the lines of that suggested by the BHEAA, would present considerable difficulties for advertisement and enforcement. Effectively it would amount to a long list of streets, some only partially covered, which would generate constant enquiries by estate agents as to whether a particular property was included or not and numerous breaches, quite possibly entirely by accident. This would in turn create a problem for enforcement, given the Council's limited resources.

Reasons for the Decision concerning the new Direction covering the central conservation areas in Brighton and Hove

8. For ease of reference, these reasons are set out in the same order as dealt with in the inspector's report.

9. The inspector accepted that the proposed Direction may well have a limited impact on those responsible for producing and installing sign boards. However, only anecdotal evidence was presented for this, and the impact has to be balanced against the harm caused by the sign boards. The Inspector took the view that there was no evidence that there are fewer sales or lettings in areas covered by a regulation 7 Direction. Potential purchasers or renters would have to use other methods to find out what properties were for sale or rent.

10. The inspector reported that from his own observations and from evidence presented to him that the voluntary agreements to control the display of boards in the various conservation areas was not working. The inspector saw numerous examples where there were several boards advertising different flats in the same building and several examples where different boards appeared to relate to the same property. Even where boards were limited to one per building there were sections of several streets which were lined with boards. The Inspector agreed with the Council that in areas where boards were prevalent, the enforcement of the time limits in the Regulations would be difficult if not impossible.

11. The Inspector considered that because the agreement is voluntary, the Council cannot enforce it themselves or prosecute offenders. Only those who break the detailed restrictions in the Regulations themselves can be dealt with and then prosecutions would be a last resort against persistent offenders. It is not clear how many boards are likely to be in breach of the Regulations, as opposed to the voluntary agreement, but the overall view was not many. The Inspector took the view that a few well publicised prosecutions would not have any effect on the overall numbers of boards in the city, even if such prosecutions could be brought.

12. In responding to other points made by the Brighton and Hove Estate Agents' Association, the Inspector concluded that estate agents were not being unfairly singled out in comparison with commercial property estate agents, as it is agents' boards that were causing a particular problem in residential areas. Signs displayed on scaffolding do stand out, but in the context of a large mass of scaffolding surrounding a building there impact of the sign itself on the street scene is negligible. The Inspector also took the view that there seemed to be no

particular problem with street furniture or a clutter of 'A' boards in the city. Moreover, the Council had separate powers to deal with these.

13. The British Signs and Graphics Association (BSGA) who submitted written objections to the proposed Direction argued that in other cities, Regulation 7 Directions were not so harsh. The Council had indicated that in areas covered by the Direction, even if an application was made to display a board, this would be granted only in exceptional circumstances. By contrast it was argued, in Westminster for example, detailed criteria were published to enable a reasonable display of boards. Furthermore, many cities had large areas of HMOs and flats and if the principles behind the direction were used nationally, large swathes of many cities would be covered.

14. The Inspector took the view that the BSGA were mistaken in their interpretation of the Westminster Direction as Westminster City Council had made it clear that applications for residential boards will only be granted in exceptional circumstances and the detailed criteria published by the Council relate to commercial boards which will not be covered by the proposed Brighton and Hove Direction. The Inspector also took the view that the proposed Direction would not set a precedent. Each Council would have to make a case based on the character of the area in question and the impact of boards. The Inspector concluded that the voluntary agreement was not working and if estate agents' boards were to be controlled in the wider city area the only effective way would be through a Regulation 7 Direction.

The Proposed Areas

15. The **Old Hove** Conservation Area forms the western extremity of the proposed Direction. It comprises streets of mostly attractive terraces of the late 19th and early 20th century which are interspersed with unattractive modern development. Church Road, which runs through the middle, is a busy commercial thoroughfare. The Inspector reported that he did not see any great concentration of boards in the area. Moreover, the overall quality of the area was mixed and he was not convinced that this area is of such high quality that the street scene risks being compromised by estate agents' boards. The Secretary of State agrees with the Inspector's conclusion that this conservation area should not be covered by the proposed Direction.

16. **Cliftonville** Conservation Area lies next to Old Hove. To the north of Church Road, Ventnor and Hove Villas are attractive, but not outstanding, but the streets to the south, which run to the sea and especially those on the sea side of the promenade, contain some fine buildings indeed. Even where the architectural heritage is mixed, there is a consistency of roof and façade that creates a harmony to the street scene. The Inspector reported that a number of streets were seriously affected by large numbers of boards and he took the view that the Conservation Area as a whole is worthy of protection. The Secretary of State agrees with the Inspector's conclusion that this conservation area should be covered by the proposed Direction.

17. **Hove Station** and **Denmark Villas** Conservation Areas are two small areas to the north of Cliftonville. The former is relatively uninspiring, and would appear

to have a more historic function rather than aesthetic. Denmark Villas is a short street of attractive villas with Italianate classical features, and which have a distinctive consistency quite different to the neighbouring Hove Station Conservation Area, and more in common with The Willett Estate Conservation Area to the east. The Inspector reported that although there were only a few signs in the Denmark Villas conservation area they stood out against the regular pattern of villas, many of which appeared to be HMOs. The Inspector judged that as the potential for more signs in this area was strong and the impact of those already in place is marked this area should be covered by the proposed Direction. The Secretary of State agrees with the Inspector's conclusion that the Denmark Villas conservation area should be covered by the proposed Direction and that the Direction should not cover the Hove Station Conservation Area.

18. **The Drive** Conservation Area is small and fully contained within the much larger **Willett Estate** Conservation Area. Both areas are dominated by wide tree-lined streets, with handsome yellow brick detached houses, many with elaborate brick detailing. The northern end of The Drive Conservation Area contains some fine red brick Victorian houses, while elsewhere there are several mews developments, with much smaller cottages. Although Eaton Gardens was interspersed with modern blocks of flats, the overall quality of both Conservation Areas is high. The Inspector reported that there were more boards in some streets than others. But even in those with few boards, because of the long, straight views, he reported that they stood out as intrusive and harmful. The Secretary of State agrees with the Inspector's conclusion that the Drive Conservation area and the Willett Estate Conservation Area should be covered by the proposed Direction.

19. **The Avenues** Conservation Area is directly to the south of Willett Estate, and continues the theme of wide boulevards lined by handsome Victorian villas, although Grand Avenue in the centre is mostly modern. In particular, King's Gardens, which faces the seafront, is made up of impressive and ornate buildings converted into flats. The Inspector reported that in King's Gardens there were no signs at all, which suggests the voluntary agreement was working here, perhaps because of the prominent seafront location. However, he also reported that Third Avenue in particular contained many boards, which significantly detracted from the strong sense of scale and rhythm that was typical of The Avenues' street scene. The Inspector concluded that the Avenues Conservation Area as a whole was vulnerable to excessive numbers of boards and was worthy of protection. The Secretary of State agrees with the Inspector's conclusion that the Avenues conservation area should be covered by the proposed Direction.

20. **Brunswick Town** Conservation Area is dominated by Adelaide Crescent, Palmeira Square, Brunswick Square and Brunswick Place which were covered by the previous Direction. The Inspector took the view that the quality of the remainder of the area is also consistently high, with characteristic curved Regency frontages and wrought iron balconies creating distinctive streets where the potential for disruption by boards is very high indeed. The Secretary of State agrees with the Inspector's conclusion that the Brunswick Town Conservation area should be covered by the proposed Direction.

21. **Regency Square** Conservation Area. This large area lies next to Brunswick Town and between the modern city centre and the sea. Some parts have high quality set-piece architectural statements, but others are drab and uninspiring. A number of streets are also busy commercial streets or contain mostly hotels and guesthouses, where the Direction would have little impact. Regency Square, which is listed grade II*, and Bedford Square are open to the sea at their southern ends along with Norfolk Square and are of high quality, with terraced, curved-fronted buildings and balconies typical of Brighton. The Inspector reported that Regency Square in particular was disfigured by numerous sign boards and while all three squares were worthy of protection he did not think that the whole of the Regency Square Conservation Area should be covered by the proposed Direction. The Secretary of State agrees with the Inspector's conclusion that Regency Square, Bedford Square and Norfolk Square should be covered by the proposed Direction but that the remainder of the Regency Square Conservation Area should be excluded from the proposed Direction.

22. The **Montpelier and Clifton Hill** Conservation Area lies to the north of Regency Square. The Inspector reported that this conservation Area was described at the hearing as the finest Conservation Area in Brighton. The area contains many streets of high quality architecture, including Vernon Terrace/Montpelier Crescent which are covered by the previous Direction. Elsewhere there is a mix of grand architecture and more domestic-scaled terraces, all of fine quality and exhibiting a strong sense of rhythm. The Inspector also reported that apart from the areas occupied by the large High School, most of the residential areas contain HMOs and flats and some exhibited the serious impact of estate agents' boards. The Inspector concluded that this conservation area was vulnerable to excessive numbers of boards and was worthy of protection. The Secretary of State agrees with the Inspector's conclusion that the Montpelier and Clifton Hill Conservation Area should be covered by the proposed Direction.

23. The **West Hill** Conservation Area is predominantly Victorian, with some fine terraced avenues of houses, such as Compton Avenue, and streets of smaller terraced houses, that are probably still occupied as individual family homes. The Inspector reported that although there are some uninspiring commercial areas around Seven Dials and Queens Road, the overall quality is high and the smaller terraced houses are particularly charming. He reported that many of these smaller terraced houses front directly onto the street and are particularly vulnerable to a line of estate agent's boards that he saw in several locations. The Inspector also reported that Buckingham Road, with larger-scale buildings, was in places covered by boards. The Inspector concluded that this conservation area should be covered by the proposed Direction. The Secretary of State agrees with the Inspector's conclusion that the West Hill Conservation Area should be covered by the proposed Direction.

24. The **North Laine** Conservation Area is predominantly known as a shopping area, with narrow streets filled with small boutiques. However there is also a surprisingly large amount of small terraced housing or cottages, similar in quality to that of the West Hill Conservation Area. The cottages generally opened directly onto the street and created islands of quiet amidst the bustle of the Laines. The Inspector reported that in some places the streetscape was

overwhelmed by estate agents' boards which can dominate the short streets. He concluded that although the direction would have little impact on the commercial areas, the residential parts were clearly worthy of protection and so intermingled with other parts it would be difficult to separate them out. He therefore took the view that the whole of this conservation area should be included in the Direction. The Secretary of State agrees with the Inspector's conclusion that the North Laine Conservation Area should be covered by the proposed Direction.

25. The **Old Town** Conservation Area has narrow lanes and an intimate feel, but appeared to be wholly commercial. The Inspector reported that there were very few signs apart from a mass of shop signs, and residential uses would appear to be confined to the upper floors of most buildings. He concluded that the Direction should not cover this conservation area. The Secretary of State agrees with the Inspector's conclusion that the Old Town Conservation Area should not be covered by the proposed Direction.

26. The **Valley Gardens** Conservation Area is long and narrow, essentially following the main route north out of Brighton. At its southern end it is dominated by the Royal Pavilion and associated cultural buildings, while the busy main roads are lined by large buildings mainly housing commercial or professional businesses. There are sections of housing interspersed, but also many modern buildings. The roads are separated by wide open green spaces, and the overall effect is quite different from either the large scale architecture or more intimate residential areas found in many of the other Conservation Areas. The Inspector took the view that even a large number of signs would not harm the character of the area, which is busy, bustling and commercial. However, he acknowledged that the character of the area changes immediately north of St Peter's church. The area around 'The Level' is much more strongly residential and contains a fine crescent of terraced houses at Hanover Crescent, with narrow streets of workers' housing immediately behind and another attractive street, Park Crescent, marks the northern boundary of the Conservation Area. The Inspector was of the opinion that there was a much greater uniformity and rhythm in the streets and a much greater risk from estate agents' boards. The Inspector concluded that the northern section of the Conservation Area from St Peter's Place northwards should be included in the Direction, but not the southern section. The Secretary of State agrees with the Inspector's conclusion that the northern section of the Valley Gardens Conservation Area should be covered by the proposed Direction.

27. **East Cliff** Conservation Area, **College** Conservation Area and **Kemp Town** Conservation Area form the eastern extension of the Direction from the pier in the centre of town to the marina at the eastern end. Kemp Town, the most easterly is a small area, almost wholly occupied by the massive Regency development of Lewes Crescent and Sussex Square, already included in the existing Direction. The complete absence of boards attests to the success of the previous Direction, and it is clearly worthy of continued protection. The College Conservation Area is a small extension to the north of the East Cliff Conservation Area. It contains a large college and playing field. But around the field are two fine terraces of good quality housing, with a further road, Canning Street, to the rear, of small cottages fronting directly onto the road. The two main terraces are in an elevated and highly prominent position, and their uniformity could easily be harmed by estate agents' boards.

28. The East Cliff Conservation Area runs along the sea front from the pier to Kemp Town. The length of the seafront is lined by grand Regency-style buildings, many in formal groupings such as Royal Crescent, and the roads running north from the seafront also contain fine terraces. St James Street and its extension, St George's Road run parallel to the seafront. The former is a busy shopping street, but has narrow roads to the north of Victorian-style cottages, while the latter is more residential and the narrow streets off it contain some handsome Regency terraces as well as smaller Victorian terraced houses. Most of the more modern intrusions have been excluded from the Conservation Area. The majority of streets therefore contain high quality buildings with the uniformity and rhythm typical of much of Brighton. The Inspector reported seeing a rash of estate agents' boards in several places which showed up the potential for harm to the street scene. He took the view that all three Conservation Areas should be included within the Direction. The Secretary of State agrees with the Inspector's conclusion that the East Cliff Conservation Area, College Conservation Area and Kemp Town Conservation Area should be covered by the proposed Direction.

Conclusions

29. The Inspector found that many of the areas to be covered by the proposed Direction contain good architecture and some was of the highest quality. A significant proportion of the larger buildings have been divided into flats or houses in multiple occupation and are therefore likely to attract large numbers of estate agent's boards. The Inspector concluded that there was a real potential for estate agents' boards to cause serious problems and that the Direction should be extended to many of the areas proposed by the Council. However, he also took the view that not all the area suggested by the Council would appear to be vulnerable and so certain areas, indicated above, should be excluded from the Direction.

30. The Inspector also took the view that that the four areas covered by the previous Direction, which expired on 22 October 2009, were of the highest quality and were particularly vulnerable to harm caused by estate agent's boards and that these areas should also be covered by being subsumed within the area to be covered by the proposed single Direction.

31. The Council applied for a Direction for indefinite duration. The Inspector took the view that the areas that were worthy of protection now will be so in ten years and so he concluded that the Direction should be for an indefinite period.

Formal decision

32. The Secretary of State agrees with the Inspector's conclusions and recommendations at IR 39-47 and having considered the representations received in relation to the proposed modification of the Direction proposes that a single Direction should be made to control the display of advertisements relating to the sale and letting of residential premises under Regulation 7 in the areas identified below for an indefinite period. These areas include the areas covered by the previous Direction which expired on 22 October 2009 and are identified on a revised map submitted by the Council on 8 June 2010. The areas to be

excluded from the Direction are: the Old Hove Conservation Area, Hove Station Conservation Area, the Old Town Conservation Area and parts of the Regency Square Conservation Area and parts of the Valley Gardens Conservation Area. A formal Direction to this effect is enclosed. The Council's attention is drawn to the provisions of Regulation 7(7), which specify the procedure for publishing the effect and date of operation of the Direction.

33. When this Direction is brought into effect, the display of estate agents' boards in respect of residential lettings and sales may only be undertaken lawfully in the following areas: Cliftonville Conservation Area, Denmark Villas Conservation Area, Willett Estate Conservation Area, The Drive Conservation Area, The Avenues Conservation Area, Brunswick Town Conservation Area, Montpelier and Clifton Hill Conservation Area, West Hill Conservation Area, North Laine Conservation Area, East Cliff Conservation Area, College Conservation Area and Kemp Town Conservation Area and in the Regency Square Conservation Area, only Regency Square itself, Bedford Square and Norfolk Square; and in the Valley Gardens Conservation Area, only the area north of St Peter's Place, when the Council have granted express consent for the display. In order not to prejudice the interests of persons wishing to display advertisements for property lettings, the Council are invited to ensure that any such applications for express consent are decided within the period specified in Regulation 16(1) of the Regulations.

Right of Appeal against the Decision

34. The decision of the Secretary of State may be challenged by way of an application to the High Court and a separate note is attached to this letter setting out the circumstances in which such an application may be made.

Yours faithfully,

Robert Segall
Authorised by the Secretary of State to sign on that behalf

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**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS)
(ENGLAND) REGULATIONS 2007
APPLICATIONS TO THE HIGH COURT**

1. Under the provisions of section 288 of the Town and Country Planning Act 1990 a person who is aggrieved by the decision given in the accompanying letter may challenge its validity by an application made to the High Court within 6 weeks from the date of the accompanying letter.
2. The grounds upon which an application may be made to the Court are:
 - a) that the decision is not within the powers of the Act (that is, the Secretary of State has exceeded his powers); or
 - b) that any of the relevant requirements have not been complied with, and that the applicant's interests have been substantially prejudiced by the failure to comply.
3. The "relevant requirements" are defined in section 288 of the Act as any requirements of that Act and the Tribunals and Inquiries Act 1992, or of any order, regulations or rules made under either Act which are applicable (s.288(9)). These include the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (SI 2007 No. 783) and the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 (SI 2000 No. 1624).
4. A person who thinks he may have grounds for challenging the decision should seek legal advice before taking any action.

INSPECTION OF DOCUMENTS – APPLICABLE ONLY TO APPEALS WHICH WERE THE SUBJECT OF A HEARING

5. Under the provisions of Rule 15(4) and (5) of the Town and Country Planning (Hearings Procedure) (England) Rules 2000 (SI 2000 No. 1626), any person entitled to be notified of the decision given in the letter may apply to the Secretary of State in writing within 6 weeks of the notification to him of the decision or the supply to him of the report, whichever is the later, for the opportunity of inspecting any documents, photographs and plans appended to the report. Any application under this provision should be sent to the address from which the decision was issued, quoting the Department's reference number shown on the decision letter and stating the date and time (in normal office hours) when it is proposed to make the inspection. At least three days' notice should be given, if possible.