

**Case Name:** *London Borough of Hackney v JCDECAUX (UK) Ltd* [2022] EWHC 2621 (Admin)  
(19 October 2022)

**Full case:** [Click Here](#)

**Commentary:** This appeal related to a notice issued by Hackney Council (the “Council”) requiring the Respondent to remove an advertisement at 133 Homerton High Street.

The display of advertisements requires consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the “2007 Regulations”).

Consent can be in the form of:

- a) Consent by the local planning authority / Secretary of State (Regulation 4); or
- b) deemed consent as a result of an advertisement being displayed on the Site continually for the preceding ten years (Regulation 6 and Class 13 Part 1 of Schedule 3 to the 2007 Regulations)

The Respondent had not sought express consent under Regulation 4 and instead sought to rely on the ten year rule under Class 13. It was common ground that the "preceding ten years" were the ten years preceding the date of issue of the removal notice on 14 February 2020.

The Council contended however that there were two periods of time during the preceding ten years when the Site was not in use for the display of advertisements, and so the requirement of continual use was not met. The first period was between 14 February 2010 and June/July 2010 (when the site itself was vacant, as evidenced by a photograph). The second period was between 17 February 2019 and 26 May 2019 (when the wall on which the advertisement was placed was being repaired and the advertisement upgraded to digital form).

In the magistrates court, the judge found for the Respondent (the landowner) holding that neither of these two periods amounted to a cessation of use for the display of advertisements as there were “exceptional circumstances” justifying them and the Site had been used for advertising purposes since the 1980s. The Council appealed to the High Court.

In allowing the appeal, Lang J found that the Judge in the Magistrates Court should have had regard to the guidance given in *Winfield v Secretary of State for Communities & Local Government* [2012] EWCA Civ 1415 in applying the test for deemed consent. The key question was whether any break in the display of advertisements was sufficient to amount to a material interruption which brings one period of use to an end, in other words, a cessation of use. If so, a new period of use will commence if and when there is any resumption of display of advertisements thereafter. In answering that question, Lang J noted that relevant factors are likely to be the length of the period of use, the

length of the interruption, the reason for the interruption and the circumstances in which it has arisen. A further key consideration was whether, during any break in the display of advertisements, the local planning authority would not have been able to take enforcement proceedings, for example, because no breach of the 2007 Regulations was taking place.

Lang J concluded that the Judge in the Magistrate's Court erred in focusing on the site's use for advertisements in the 1980s and not taking into account the date at which the advertisement panel was installed (June 2010) and the date that advertisements began to be displayed (July 2010). The Judge had also failed to apply the correct legal tests for cessation of continuous use. For these reasons, the Council's appeal was allowed and the Respondent's appeal against the issuing of the removal notice was remitted to another Judge at the Magistrates Court for re-consideration.

*Case summary prepared by Emma McDonald*