The Planning Inspectorate

Appeal Decision

Site visit made on 28 September 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 October 2020

Appeal Ref: APP/V1260/X/20/3248681
Land Fronting Premier Inn, Barrack Road BH23 2BN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Alan Masters of Synergy Media Holdings Ltd against the decision of Bournemouth Christchurch Poole Council.
- The application Ref 8/19/1591/CLE, dated 23 December 2019, was refused by notice dated 4 March 2020.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is Existing use is advert site.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The site address on the application form refers to Bailey Road, whereas the appeal form and the Council's decision notice describe this as Barrack Road. I have used the latter in my decision. Similarly, there is a small difference between the description of what is applied for between the application form and the description given by the Council. I have used that from the former.

Reasons

3. The appellant seeks a certificate of lawful use to show that the use of land as an advertising site is lawful. The onus lies with the appellant to prove his case on the balance of probability, using evidence that is precise and unambiguous.

4. The site lies on Barrack Road, a busy road that runs to the centre of Christchurch, a short distance to the south. The advertisement in question is a 48-sheet poster advertisement.

5. Schedule 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) ('the 2007 Regulations') sets out classes of advertisements for which deemed consent is granted. Of these, Class 13 sets out that an advertisement displayed on a site that has been used continually for the preceding ten years for the display of advertisements without express consent attains deemed consent. The key word here is "continually" during the preceding ten year period. This means that it is incumbent on the appellant to show that the site has been used for the display

of advertisements continually for ten years prior to the date of his application. This would be the 23 December 2009, 'the relevant date'.

6. The appellant's evidence is set out in the form of two 'Comments' as to "why despite a break deemed consent applies" at Barrack Road, Christchurch. Although he misspells the respondent, it is clear that the appellant cites the well-known judgement in *Westminster City Council v Moran* [1998] EWHC Admin 637 in support of his case.

7. That judgement was reached under the terms of The Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended) ('the 1992 Regulations'). It retains its relevance, however, as the provisions of Class 13 of the 1992 Regulations also required the use of land for the siting of advertisements on a continual basis. *Westminster* held that continually in Class 13 of the 1992 Regulations was intended to encompass advertising which was regularly occurring irrespective of whether it was uninterrupted. The appellant also cites *Parker v Secretary of State* [1997] SCLR 829 [1998] SLT 299 in which he says that a 3-year interruption due to a legal dispute did not mean that the deemed consent had lapsed.

8. The appellant's evidence acknowledges that there has been an interruption in the use of the site. It was previously owned by another company, J C Decaux and it appears that the interruption was as a result of a change of strategy by that company. However, I have not been how long this interruption lasted, so I cannot be sure how the provisions of *Westminster* apply here. However, this is not determinative in my decision.

9. The appellant's evidence, which included drawings and photographs, does not provide precise and unambiguous evidence as to when the site has been used for the display of an advertisement. Whilst the site was chosen "because of its long term established use as an advertising site", this does not provide precise and unambiguous evidence of the dates it was so used. Therefore, it does not show, on the balance of probability, that the use has occurred in the manner claimed for a ten-year continual use prior to the application.

10. Furthermore, I have no substantive evidence on what is described as the "reinstatement" of the advertisement after the interruption. Additional information of this is required to assess whether the lawfulness of the advertisement is affected by reason of the second of the Conditions and Limitations in Class 13. This relates to the removal and subsequent erection of any structure to continue the display. Amongst its terms, Comment 2 states that "so long as you're simply reinstating what was there before then you aren't falling outside of the limitations of Class 13". Whilst this might be correct, I have no evidence to show that this is what actually occurred.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Existing use is advert site was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Roy Curnow

INSPECTOR