



Appeal Decision

Site visit made on 25 August 2020

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 October 2020

Appeal Ref: APP/V1505/X/20/3246853

Land to the south of the A127 Southend Arterial Road

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) 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 – Synergy Media Holdings against the decision of Basildon District Council.
 - The application ref. 19/01603/LDCE, dated 18 November 2019, was refused by notice dated 9 December 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is 2 no. advert structures (1 no. 48 sheet and 1 no. 96 sheet – split as 2 no. 48 sheets).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Reasons

3. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the two advertisement hoardings fall within that category of advertisement for which deemed consent has been granted. In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.
4. The appellant argues that there are two hoardings on the site, which has been used for the purposes of advertising for over 20 years. The Council say that the advertising structures were removed completely from the site and were subsequently replaced.
5. Part 1 of Schedule 3 to The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 sets out classes of advertisement

for which deemed consent is granted. These include Class 13 of Part 1, which specifies and describes:

'an advertisement displayed on a site that has been used continually for the preceding ten years without express consent.'

This is subject to the limitation in paragraph 13(1):

'that an advertisement does not fall within this description if, during the relevant 10-year period, there has been either a material increase in the extent to which the site has been used for the display of advertisements or a material alteration in the manner in which it has been so used'.

6. Furthermore, paragraph 13(2)(b) states:

'if any building or structure on which such an advertisement is displayed is removed, the erection of any building or structure to continue the display is not permitted'.

7. In January 2020 the Council served a notice under s.225A of the Act for removal of the two advertising structures from the appeal site. Attached to that notice were two photographs showing the site in mid-December 2019 with no such structures, and another of 31 December 2019 with them in place. Other photographs have been put in showing the site without any hoardings in January 2017, and with 3 hoardings – of a different pattern than now exist – taken in August 2016 (according to the date on the Street View images).
8. It appears to me that there have been two significant and material alterations to the way in which the site has been used – the removal of three hoardings at some time before January 2017, and the erection of two hoardings after 13 December 2019. Furthermore, under the provisions of 13(2)(b), the removal of the structures prior to January 2017 precluded the subsequent erection of new structures. The appellant has submitted virtually nothing to gainsay the Council's evidence of these changes.
9. I conclude that on the balance of probabilities the appeal site has not been used continually for display of advertisements for ten years before the date of the LDC application. It follows that the Council's refusal to grant the LDC was well founded and that the appeal should fail.

Conclusions

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the retention of 2 no. advert structures (1 no. 48 sheet and 1 no. 96 sheet – split as 2 no. 48 sheets) on Land to the south of A127 Southend Arterial Road 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.

Stephen Brown

INSPECTOR