
Appeal Decision

Site visit made on 10 June 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th August 2022

Appeal Ref: APP/M4510/Z/22/3297823

The Bake, 98 Byker Bank, Byker, Newcastle upon Tyne NE6 1LA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Billboard Advertising Limited against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref 2022/0281/01/ADV, dated 14 February 2022, was refused by notice dated 12 April 2022.
 - The advertisement proposed is described as 'a 48 sheet illuminated (mechanical) sequential advertisement which existed at the site prior to 2019'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the visual amenity of the surrounding area, including the setting of the listed building.

Reasons

3. The proposed advertisement display would be located on the gable elevation of 98 Byker Bank, a commercial building that is currently in use as a restaurant. Measuring approximately 3.1m by 6.2m, it would comprise an internally illuminated hoarding using a mechanical system to display sequential advertisements. The parties agree that no adverse impact would arise from the proposal in terms of effect on highway safety.

Planning history

4. The Council state that there is no record of advertisement consent having been granted for the display of an advertisement hoarding on the gable elevation of No 98. From archive imagery available on Google Street View, they have established that a hoarding advert has existed in some form at the appeal site since August 2008. The advert present at that time appears to have been a 48 sheet mechanical hoarding. The image of June 2015 shows the paper display in place, but in the images of May 2016, October 2016 and May 2017, it appears to be disused.
5. In the next available Google image of June 2018, works had commenced to install the existing digital screen. An application ref: 2019/0343/01/ADV was made to retain this advertisement, but was refused and was subsequently dismissed at appeal, ref: APP/M4510/Z/19/3231734. Following that dismissal,

the Council commenced enforcement proceedings to seek the removal of the digital hoarding from the site.

6. The appellant argues that, because there has been an advertisement in place on site for over 10 years, the continued display benefits from deemed consent under Class 13 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. However, Class 13 does not apply if there has been a material increase in the extent to which the site has been used. In the case of *R (oao) Clear Channel UK Ltd v Hammersmith & Fulham LBC [2009] EWCA Civ 2142*, the courts held that a larger structure with a different form of illumination was a material change which meant the deemed consent that had been built up over the previous 10 years had been lost and the display of the sign was unlawful.
7. In view of the Council's findings above, it appears that the nature of the hoarding has changed, resulting in the adverts being displayed differently. In my view, this amounts to a material change that means there cannot be deemed consent under Class 13. The appellant provides no substantive evidence to show that a deemed consent under Class 13 exists.

Significance

8. Close to the appeal site is the grade II* listed Byker Wall. Built as social housing in 1975-1978 for the City of Newcastle upon Tyne, the Byker Wall is a sizeable complex made up of a series of blocks. The development has a commanding presence and is highly visible in the surrounding area due to its considerable scale. It is notable for its innovative design, inventive decoration, such as patterning in contrasting brickwork, and neo-vernacular detailing and materials.
9. No 98 sits close to the western end of the curved perimeter block which comprises Northumberland Terrace, one of the earliest phases of the housing estate. This façade comprises panels of brickwork in muted shades varying from dark brown to soft red and orange. These panels are interspersed with lighter buff sections. All these features contribute to the significance of the listed building.
10. In contrast to the overtly modern style of the Byker Wall, No 98 is a modest two storey building whose historic form remains legible, although it has been altered. It is a remnant of the late 19th century development which occupied the area prior to the development of the Byker Wall, and so forms part of the social history of the area. Due to these attributes, it possesses a modest degree of heritage significance, contributing towards the setting of the adjacent designated heritage asset.

Effect of the development

11. The proposed advertisement would be located in an elevated position which primarily faces pedestrians and road users on the adjacent highway. In views from these surroundings, due to its large size and high level location, it would appear as a substantial and prominent feature in the local street scene. The internal illumination would be a garish addition within the setting of the listed building, failing to complement the visual qualities of its mellow patterned brickwork. Although Byker Wall is of an overtly modern design, prominent

illumination is not a component of its character or appearance, or of its immediate setting.

12. The appellant contends that the local area is predominantly commercial in character. However, in view of the fact that Byker Wall is a housing estate, I consider it more accurate to say that the area is mixed in terms of land use. There are a number of commercial buildings in the surrounding area, but I did not see any comparable advertisements within the immediate environs of this section of the Byker Wall.
13. I accept that No 98 is in commercial use, and so some form of advertising is to be expected. However, this does not mitigate the need for advertisement proposals to respect the visual amenity of the area, and the setting of the listed building.
14. My attention has been drawn to an express consent, ref: 2019/1342/01/ADV, granted for a digital display on the gable end at 20-22 Byker Bridge. However, the accompanying statement for that proposal states that the site is not in the same context as a listed building. That detail alone leads me to conclude that these cases are not directly comparable.
15. Drawing the above factors together, I conclude that the advertisement would be unacceptably harmful to the amenity of the area, including the setting of the listed building. In reaching this conclusion, I have taken account of the development plan as a material consideration, specifically Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne, insofar as it seeks to conserve and enhance the historic environment, Policy DM16 of the Newcastle upon Tyne Development and Allocations Plan (DAP), which protects the setting of heritage assets, and DAP Policy DM20, which requires high quality and sustainable design.
16. I have also had regard to the fact that Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special regard be had to the desirability of preserving the setting of listed buildings.

Conclusion

17. For the reasons above, I conclude that the appeal should be dismissed.

Elaine Gray

INSPECTOR