



Appeal Decision

Site visit made on 25 January 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/A3655/X/22/3298657

3 St Johns Road, St Johns, Woking, Surrey GU21 7SE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr M K U Bhuiyan against the decision of Woking Borough Council.
 - The application ref PLAN/2022/0170, dated 23 February 2022, was refused by notice dated 22 April 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - A certificate of lawful use or development is sought for what is described as “advertising sign on front fascia.”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site location address on the application form did not include a property number or name. I have referred to No 3 St Johns Road which was included as the appellant’s address on that form. The name of the premises can be further clarified as ‘The Village’ as included in the wording of the advertisement on the fascia of No 3, which is a take-away business.

Main Issue

3. The main issue is whether the Council’s decision to refuse the LDC was well founded. The onus is upon the appellant to demonstrate their case on the balance of probabilities.

Reasons

4. The advertisement currently on site is the same as it was at the time of the application for a LDC, that being a fascia across the top of the single storey building, above the street-level display window.
5. Advertisements are normally dealt with under the provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the regulations) and those regulations are made in turn under the provisions of the Act. Section 55 of the Act defines the meaning of development and s55(5) specifically relates to advertisements. Accordingly, the use for the display of advertisements of any external part of a building not normally used for that purpose shall be treated as involving a “material change in use of that part of

- the building". Section 222 of the Act in turn confers planning permission for advertisements which accord with the regulations.
6. There is no dispute that express consent has not been given for the advertisement. Schedule 3, Part 1, of the regulations provides specific classes of advertisements which have deemed consent by reason of regulation 6. Class 13 of that part is therefore of most relevance and provides deemed consent for advertisements on sites used for the preceding 10 years for the display of advertisements without express consent. The appellant has also not disputed the Council's view that none of the other Part 1 classes of deemed consent can apply to this advertisement.
 7. The appellant therefore needs to have demonstrated that the advertisement has been displayed continually for the 10 years preceding the date of the application, therefore the material date is 22 April 2012. There are also conditions and limitations that have to be complied with for advertisements displayed for 10 years to have deemed consent. Included is the stipulation that an advertisement does not fall within the Class 13 description if during the relevant 10 year period there has either been a material increase in the extent to which the site has been used for the display or there has been a material alteration in the manner in which it has been so used [13(1)].
 8. The appellant has provided a street-view image which is dated August 2008. Whilst there is no formal sworn statement from the person or organisation responsible for taking that image, it is not disputed by the Council that this date is reliable. The overall fascia in that image appears to be of similar proportions as it is now as does the raised lettering of "Village". The fascia is now white rather than the previous grey or silver. There is a large dark-blue paint-stroke or "splash" effect behind the main lettering. Some of the other lettering is different, being integral to the background. However, of further significance is the illumination which the Council's evidence indicates had been installed by 19 October 2021, within the 10 years before the application. This provides a halo effect behind the word "Village" as well as providing integral illumination of the other wording and the displayed telephone number.
 9. These changes as a matter of fact and degree have made a material alteration in the manner in which the site has been used for the display of the advertisement. This in my view is sufficient to prevent Class 13 providing the advertisement with deemed consent. In addition, illumination is not permitted by reason of (13)(3).
 10. It is not possible in LDC appeals, as suggested by the appellant, to attach planning conditions.

Conclusion

11. For the reasons given above I conclude on the balance of probability that the Council's refusal to grant a certificate of lawful use or development in respect of an "advertising sign on front fascia" 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.

Andy Harwood

INSPECTOR