

**IN THE STRATFORD MAGISTRATES' COURT**

**Case reference: 012100527616**

**BETWEEN:**

**Clear Channel UK Limited (Appellant)**

**-and-**

**London Borough of Hackney (Defendant)**

**Judgment of : District Judge McIvor**

**Counsel: Mr. Matthew Henderson (for the Appellant), and Mr. Edmund Robb (for the Local Authority)**

1. This is an appeal against the service of a removal notice served by the London Borough of Hackney on Clear Channel UK Ltd on 18 November 2020. It relates to display structure on 44 Amhurst Road.
2. The notice says that the structure should be removed because there is no consent for it to be there.
3. The appellant says it does not need express consent, and claims that it has deemed pursuant to class 13 of the Advertisement Regulations.
4. I am grateful for the full and helpful written and oral submissions of Counsel acting for the appellant and for the Council.
5. I have had regard to various documents, authorities and guidance, including to internal documents of the appellant, and I have seen a large number of photographs of the appeal site and its surroundings, both modern and historic, and one aerial photograph.
6. I have considered all this documentary evidence carefully, as I have the live evidence of Mr Porte (the appellant's planning manager), and Nick Kirk (a senior enforcement officer for the London Borough of Hackney).
7. The key question is: can the appellant prove they are entitled to rely on deemed consent, and have they fulfilled or fallen foul of the terms of the conditions in class 13?
8. The appellant is not entitled to rely on deemed consent if, in the previous 10 years, there has been a material alteration in the manner on which the site has been used.

9. The material alteration goes to the question of amenity, in this case visual amenity. It was therefore necessary to make a finding on what is the character of the area.
10. The appellant says that the character of the area around the appeal site is made up of a mix of residential and commercial uses, and has relied on a photograph of Amhurst Road showing some shops. We also heard evidence of there being a nearby transport hub, and you can see buses on the photograph of Amhurst Road (looking south eastwards). The appellant says that Amhurst Road is a busy thoroughfare with a hotel.
11. The Council however, says that this is a “*predominantly residential area*”. It relies on the evidence of Nick Kirk (who lives locally) as well as on various different photographs in the area around the appeal site. On these photographs, I have been shown the site from a number of different views, including along Amhurst Road, and I am told that on three sides of the site there are residential buildings.
12. It is true that I can see some shops along one part of Amhurst Road. However, that is only one view. I have taken into account all the different views in the photographs, and the map I have been shown, and considering the points made and the evidence I have seen, I am of the view that the character of the area is very much “*predominantly residential*”.
13. Finding that as a fact, the question then is “whether there has been a material alteration”?
14. The appellant says no: the change was simply a technical upgrade in the type of advertisement at this site, and that such a change is not prohibited. I was pointed to a number of authorities in this regard.
15. The change is said by the appellant to have occurred in October or November 2014 when the internally lit scroller structure was replaced with an LED or digital media display advertisement structure. The appellant says there is no material difference between the two.
16. I disagree. I am satisfied that there is a material difference between the scroller advertisement which had lights shining through the screen, and a media screen which projects light outwards and emits a different kind and quality of light with different colours.
17. In the judgment of Mr Justice Irwin (in *R (oao Clear Channel) v London Borough of Hammersmith and Fulham* [2009] EWHC 465 Admin), the Judge described the change between an internally lit scroller to a media screen as a “*strikingly different kind of illumination*”. Mr Kirk also said that in his view the media screen advertisement in this case was strikingly different from the advertisement it replaced. I agree.

18. I am satisfied that there was material alteration when the scroller advertisement changed to an LED digital media screen.
19. The local authority also refers to the removal of the gantry. I make no finding on that because there is no need to in the determination of this appeal.
20. The next question is whether the material alteration is "*capable of causing harm*" to residential amenity? This question will always depend on the character of the area, which is why it is important to come to a preliminary view on what is the existing character of the area.
21. The appellant says no one has been identified as suffering harm from the LED digital media screen, referring to there being only one complaint back in 2014, and that no "*receptors of harm*" have been identified by the Council.
22. I don't consider that I have to identify a receptor of any harm caused by this advertisement. I consider that the advertisement is "*capable of causing harm*", that it is too bright, that it is startling, and that the type and degree of luminance is not suitable to the area in which it is situated, such that harm is in fact caused to residential character and amenity.
23. This issue alone is sufficient to dismiss the appeal.
24. Finally, I have also considered the separate point raised concerning the continuity of the ten year period, and whether this was broken in this case.
25. The Moran case established that a period of a few months can establish a break.
26. I am satisfied that as of the 17 July 2014, the situation at this site was that: "*the current scroller is completely broken down and we are not selling any faces*" which is a quotation taken from an internal Clear Channel document on that date at page 81 of the evidence bundle.
27. The "*complete*" breakdown recorded in this document appears to have taken place at least between the period 17 July to some point after 28 October 2014, when the new LED digital media screen was installed.
28. I regard there as having been a complete change, not only from the fact the previous advertisement was "*completely broken down*" and subsequently replaced, but that the site appears to have been selected as part of the appellant company's "*pink panther project*", and that there was a new rent agreed for the installation of the media screen, together with a completely new agreement which was signed with the owner of the site.

29. In the particular circumstances of this case, I conclude that the break in use back in 2014 did have the effect of bringing the ten year period to an end.

30. For both these different reasons the appeal is dismissed.

Costs awarded to the Local Authority in the sum of £21,738.56 payable within 28 days.