

Case Name: *Borough Council of Calderdale v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 695 (Admin) (22 March 2021)

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Commentary:

Calderdale Borough Council has successfully challenged a planning inspector's decision to permit a large digital advertisement on a site in Elland, Calderdale.

The case concerned an application by Clear Channel to upgrade its current static advert to an illuminated digital advertisement, which would display several advertisements on rotation. The Council's highway officers had advised that there was evidence that such digital advertisements could distract passing drivers. The highways report therefore recommended that, if consent were to be granted, a number of safety conditions should be imposed to minimise this risk of distraction, including conditions to "control the intensity of illumination" and "to avoid any moving or apparently moving images".

On 13 December 2019, the Council refused express consent on the basis that the advertisement's internal illumination would harm the amenity of neighbouring occupiers and would accordingly be contrary to paragraph 132 of the NPPF. Clear Channel appealed this decision .

The inspector allowed the appeal, noting that the advertisement board was not in the direct line of sight of neighbouring windows and so would not have an unacceptable effect on the living conditions of neighbouring residential occupiers.

The Council challenged this decision on three grounds:

1. the inspector had failed to have regard to the material consideration of highways safety conditions;
2. failed to give legally adequate reasons for granting advertisement consent without imposing the necessary highway safety conditions;
3. acted unfairly in failing to permit the Council to make further representations prior to issuing his decision.

Timothy Mould QC (sitting as a Deputy High Court Judge) held that the Council had established that the inspector failed to have regard to the need to impose specific conditional controls in the interests of highway safety and had therefore failed to discharge his duty under Regulation 3 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Judge Mould further held that the inspector's reasoning was legally inadequate meaning the Council were unable to understand the reasons for the inspector's decision. He therefore quashed the decision. Judge Mould did not however agree that it had been unfair for the inspector to reach a judgment about the conditions to be imposed without first inviting further representations from the parties - the inspector had the benefit of Clear Channel's representations on that question and the advice given by the local highway authority to the Council at the application stage