



Appeal Decision

by **Brian Cook BA (Hons) DipTP MRTPI**

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

Decision date: 12 February 2020

Appeal Ref: APP/G5750/X/18/3219325

64 Romford Road, Stratford, London E15 4EE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended 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 Mr Rabinder Bhanot against the decision of the Council of the London Borough of Newham.
 - The application Ref 18/03027/CLE, dated 17 October 2018, was refused by notice dated 26 November 2018.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of rear garden as a car park.
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Decision

1. The appeal is dismissed.

Main Issue

2. When a use of land has taken place without planning permission, the Council has a period of 10 years from the date when the use first began to take enforcement action. The main issue therefore is whether the use for which the LDC is sought began and thereafter continued substantially uninterrupted for a period of 10 years before 17 October 2018. In consideration of the main issue I will need to assess whether any changes in the nature of the car parking made available amount to a material change of use of the land and thus a new chapter in the planning history of the site.

Reasons

3. The Planning Practice Guidance confirms that in the case of applications for existing use or development, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. That guidance is based on established case law.

The evidence

The appellant

4. The appellant's evidence comprises that submitted with the initial application to the Council and that included with the appeal. It amounts to:
 - (a) A statement of evidence by Paul Dickinson and Associates (PDA);

- (b) A short statement by the appellant with the application;
 - (c) A more detailed version of that statement by the appellant including some images of the site and comments upon the Council's delegated report; and
 - (d) What purport to be statutory declarations by Majid Manzoor Ahmed (there are two) and Rajeev Deshmukh.
5. The appellant's case revolves around the use of the application site in association with three properties, all of which were owned by the appellant by January 2013.
 6. In August 2003 the appellant bought 47 Romford Road which at that time was a 12-student house in multiple occupation (HMO). This became the London Olympus Hotel from, according to the appellant, January 2009.
 7. In November 2007 the appellant bought 35 Romford Road. Although its use at that time is not mentioned, from 5 October 2008 (and so before 47 Romford Road became the London Olympus Hotel) the appellant states that 35 Romford Road '...started running as part of the London Olympus Hotel'.
 8. In 1964, 64 Romford Road belonged to Queen Mary University providing four flats for student accommodation. In the rear garden there were seven garages and car parking. It appears from aerial photographs that the garages had been demolished by 2005 and the area concreted over by 2008 at the latest. In January 2013, the appellant bought 64 Romford Road.
 9. The appellant notes that, before he bought it and converted it to the hotel, some of the students living at 47 Romford Road were friends of those living at No. 64; it was not uncommon for cars owned by residents at No. 47 to be parked at the rear of No. 64 given the lack of on-street parking in the area.
 10. The appellant highlights the continuing lack of on-street parking in the area and the limited availability of off-street parking for guests at his hotel. These were mainly construction workers preparing Stratford for the Olympic Games held in 2012. In essence, the appellant's case is that the appeal site was used, in breach of condition 2 of planning permission 64/9356/E, for car parking by guests at his hotels (Nos. 35 and 47), at the Stratford Hotel at 43 Romford Road and at the Lodge 51 at 51 Romford Road until 2017 when it stopped trading. This is confirmed for the period February 2008 to April 2015 (a period of seven years) by Mr Ahmed in his statutory declarations.
 11. The statement by PDA on behalf of the appellant states that the car park has a capacity of about eight cars. Four of the spaces are reserved for tenants of the four flats in the building with the other four being made available for rent through on-line parking web sites (emphasis added). Bookings are said to be strictly controlled so that no more than the available four spaces are occupied. The case made is that rental parking does not amount to a material change of use from parking associated with a hotel or residential use. The date from which spaces have been rented has not been given.

The Council

12. The Council's evidence is included in the officer delegated report. It notes that planning permission was granted in 1964 under reference 64/9356/E for "Erection of four flats and seven garages". Condition 2 of the permission states

that: "the car parking accommodation shown upon the drawing shall be provided and retained permanently for the accommodation of vehicles of occupiers and users of the premises only and shall not be used for any other purpose."

13. It also provides two images of what the appellant does not dispute is the appeal garden from May 2013. These were in connection with a pre-application submission in respect of a proposal for the erection of 3 No. self-contained residential units to the rear of the premises. The images show what the Council says are garages (the appellant-correctly in my view-says they are sheds), a deep trench and no cars at all. The Council suggests this is indicative of a break in the continuity of the claimed use of the land although the appellant explains that the trench was there for a very short period.
14. The Council further concludes that the enforcement action that it successfully took in September 2013 also shows a break in continuity of use. The notice alleged the use of the site as short-term lets without planning permission. It concludes that this unauthorised use would represent a break in the use of the rear car park for renting out parking spaces as suggested is lawful in the application at appeal.
15. In March 2018 an enforcement case was opened regarding the use of the front and rear of the property as a commercial car park. It was ascertained that parking spaces were being advertised on-line. The maximum number of vehicles observed was 11 during July 2018. The owner was written to and advised that the unauthorised use should cease.
16. At the last visit on 19 September 2018 the appeal site was being used to store new or nearly new Toyota cars. At least 16 parked nose-to-tail are shown in an image. Local residents had brought to the Council's attention that the site was being used by a car dealership to store vehicles.

Appraisal

17. An application made under s191 of the Act enables an applicant to establish whether the existing use of the land, that is the use of the land at the date of the application, is lawful (emphasis added). It is plain, on the balance of probability, that by the 19 September 2018 at the latest, the use of the land at the rear of No. 64 Romford Road was for the storage of new or nearly new Toyota cars for a dealership which a local resident suggests is in the Redbridge area. This is set out quite clearly in the Council's delegated report and is only very selectively and partially commented upon by the appellant in the more detailed version of his application statement submitted with the appeal.
18. In my judgement, at the date of the LDC application the existing use of the land was, as the Council contends, car storage. There is no evidence that this use of the land had ever taken place prior to September 2018 or thereabouts. That use therefore began only a matter of weeks before the date of the LDC application (17 October 2018). The Council therefore still has close to 10 years to take enforcement action, should it deem it expedient to do so, unless use of the land for 'car storage' does not amount to a material change of use from use of the land for 'car parking'.

19. To answer that question requires an understanding of the planning unit. That in turn requires an understanding of the unit of occupation and the functional and physical relationship of the uses within it.
20. In my judgement, while the unit of occupation may have remained constant over time since 1964, the functional relationships of the uses within it have not.
21. When developed in accordance with the 1964 planning permission, the planning unit would have comprised the flats and the car parking accommodation provided for them and which, by condition, were to be used solely by the occupiers and users of the premises.
22. That functional link between the residential accommodation within the planning unit and the car parking within it was broken when the site began to be used by guests of the hotels owned by the appellant and others to park cars and vans. In my judgement, the nature of the comings and goings of what was a commercial use would be different in character to a purely residential use. I therefore conclude that a new planning unit was created by what was a material change of use and a fresh chapter in the planning history of the appeal site began.
23. Although it is the responsibility of the appellant to be precise and unambiguous there is, in fact, considerable ambiguity in the appellant's evidence as to when this was. As set out above, there is an inconsistency in the time when the London Olympus Hotel began trading. It could have been October 2008 (as the appellant says in connection with evidence about 35 Romford Road) or it could have been January 2009 as said elsewhere by both the appellant and PDA. On the other hand, Mr Ahmed puts the use in association with his hotel at 51 Romford Road as starting not later than February 2008. Mr Deshmukh can only speak to the period from 12 October 2009 so his evidence does not assist.
24. The evidence of Mr Ahmed is the outlier. It is only this statement that can give a period of 10 years prior to September 2018. I am however mindful of the fact that Mr Ahmed's statement is a properly sworn statutory declaration made under the provisions of the 1835 Act. There is, however, no other evidence to corroborate this date.
25. Nevertheless, even if it is the evidence of Mr Ahmed that should be preferred against all the other evidence submitted by the appellant, the lawful use that it may establish was brought to an end sometime between 1 August 2018 (the date of the PDA statement which still describes the use of the site as being 4 spaces for tenants and 4 spaces for renting) and September 2018 when the site was used for car storage.
26. The way that new and nearly new vehicles would be delivered to the site is likely to be wholly different to private vehicles coming and going to park. They may be delivered by transporter or they may be driven. In any event, to park them as shown in the Council's image would, in my view, require a great deal more manoeuvring than simple parking. The nature of that use is of a different character and thus a further material change of use. On the evidence of local people to the Council, there is no functional link at all between the car storage use of the site and any premises in the immediate area.

27. In my judgement, yet a further planning unit was therefore created around September 2018. Any lawful use rights that may have been gained by passage of time (and it is by no means clear, on the balance of probabilities, that any had) would therefore be lost with this further new chapter in the planning history of the site.
28. I therefore conclude that the existing use of the site at the date of the application was car storage. Moreover, I find, on the balance of probabilities, that this use began no earlier than around September 2018 and that, when it did, a new planning unit was created and a new chapter in the planning history of the site started. The Council would therefore have until sometime around August 2028 to take enforcement action if it deemed it expedient to do so. The appeal must therefore fail.

Conclusion

29. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of rear garden as a car park 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.

Brian Cook

Inspector