



Appeal Decision

Site visit made on 27 January 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2020

Appeal Ref: APP/U5360/C/19/3232461

Land to the rear of 196 Shoreditch High Street, London E1 6LG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Oseman of J Hollywell Ltd against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 31 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to a car park (*sui generis*).
 - The requirements of the notice are:
 - 1) Cease the use of the property as a car park (*sui generis*);
 - 2) Remove from the property the ticket booth, signage and all other fixtures and fittings facilitating the use as a car park.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion in section 6 of the words "One (1) month" and their replacement with "Three (3) months". Subject to this variation, the appeal is dismissed and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) appeal and the Deemed Planning Application

Main issues

2. The first main issue is the effect of the use upon the supply of commercial floorspace in the area. The second is, the effect of the use upon modes of travel.

Reasons

Supply of commercial floorspace

3. The appeal site is located partly beneath a concrete bridge in a busy, mainly commercial part, of London. The Council considers that the site should be used to contribute towards the supply of commercial floorspace.
4. There is no dispute between the main parties that the site falls within a Priority Employment Area (PEA) and Central Activity Zone (CAZ) which are referred to

within policies in the Core Strategy¹ (CS) and Development Management Local Plan² (DMLP). Various policies have been referred to from these documents as well as some from the London Plan³ (LP) and the National Planning Policy Framework (the Framework).

5. LP Policy 4.1 seeks, amongst other things, to promote and enable the continued development of a strong, sustainable and increasingly diverse economy across all parts of London, ensuring the availability of sufficient and suitable workspace. CS Policy 17 specifically states that in PEAs business, hotels and non-residential institutions will be the preferred uses. Car parking is not a preferred use in PEAs according to that policy nor within DMLP Policy DM17. Furthermore, in PEAs outside town centres and in CAZs, a sequential approach should be followed by any proposer of a use prioritised for town centres. DMLP Policy DM14 requires, for redevelopment of sites, the consideration of commercial opportunities and potential of the floorspace, requiring examination through marketing evidence, following which loss of employment floorspace will only be acceptable in certain circumstances. I have not been provided with marketing evidence.
6. The appellant accepts that the current use does not comply with the above policies and accepts that in the long term, a commercial redevelopment will be necessary. The freehold of the site is owned by Transport for London and they have no current schemes in the pipeline for redevelopment that I am made aware of. Some local businesses have stressed that there is very little space for nearby for tradespeople and delivery drivers to park vehicles as well as for temporary storage related to construction in the area. I have limited evidence about these matters although I saw at my site visit that the area is subject to on-street parking restrictions and 'red routes'. It is not clear whether a scheme for the redevelopment of this site could incorporate any essential delivery vehicle parking.
7. The current use of the site has some economic benefits, including the contribution to non-domestic rates. However, the above policies set out an economic vision. This strategic site has been identified for local and inward investment as encouraged within the Framework, through the development plan process. A grant of planning permission will not achieve what the policies are encouraging and may delay the more suitable redevelopment of it even further. I have little evidence to indicate that the loss of the site for parking of commercial vehicles, whether for delivering to nearby shops and other businesses or related to nearby construction sites, is of critical significance to the economy of the area.
8. In relation to the first main issue, the use of the site has an adverse impact upon the supply of suitable commercial floorspace in the area. This does not comply with LP Policy 4.1, CS Policy 17, DMLP Policies DM14 and DM17 or the Framework.

Travel choices

9. The appeal site is located in a very accessible urban location which the appellant does not dispute has a PTAL⁴ of 6b where DMLP Policy DM47 indicates

¹ Hackney Local Development Framework, Core Strategy, adopted November 2010

² Hackney Development Management Local Plan, adopted July 2015

³ The London Plan, March 2016

⁴ Public Transport Accessibility Level

that car free and car capped developments should be expected. A car park in this location clearly encourages the use of private vehicles. A sign on the outside of the site at the time of my visit and which is also shown on the appellant's photographs, indicates that this location is outside of the London congestion charging zone and would therefore seem to be well placed for commuters wishing to drive into the area and progress further using other modes of transport.

10. The appellant has submitted a number of photographs which show that the site is used for parking large commercial vans. When I visited, as well as commercial vehicles, there were also a significant number of private cars parked on the site that I could see from Hollywell Lane. These are 'snapshots' in time and are not necessarily representative of the general nature of use. However even if the vehicles normally parked here are commercial vans, I have insufficient evidence to know whether these are related just to local development sites, are delivering to nearby shops and businesses or whether they have also just been used for their drivers to commute to the edge of the congestion zone before travelling more centrally by other means.
11. The development does not help to reduce the need for travel by car or to achieve the movement hierarchy defined by DMLP Policy DM44. Based upon the evidence provided, in relation to the second main issue, I consider that the development encourages vehicles as a mode of travel. This does not comply with CS Policy 6, DMLP Policies DM44, DM45 and DM47.

Other matters

12. The appellant has suggested that a temporary planning permission for a further year could be granted. The Planning Practice Guidance provides advice on the circumstances where temporary permission may be appropriate. These include where a trial run is needed to assess the effect of the development which is not relevant in this case as the current use has been operating for a number of years. Secondly, the advice is that a temporary permission may be appropriate to enable the temporary use of vacant land or buildings as a 'meanwhile' use. It is not clear in this case whether the site would remain vacant if the notice is complied with or whether the continuation of the current use is a factor in preventing preferable uses, in the terms of the LP, DMLP and CS, from coming forward. I do not consider that the use as alleged should be permitted on a temporary basis.

Conclusion on ground (a)

13. For the reasons given above and having regard to other matters raised, the appeal on ground (a) and the application for deemed planning permission fail.

The Appeal on ground (g)

14. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed.
15. Although I consider the development is unacceptable with respect to its planning merits, having only 1 month to cease the use will not provide much time for users of the car park to seek out alternatives. It will also lead to a loss of income for the appellant and will not provide much time to carry out the necessary procedures to close down the business. A period of 3 months as

requested would in my view strike a more proportionate and reasonable balance.

16. The appeal on ground (g) therefore succeeds.

Conclusion

17. For the reasons given above, I conclude that the appeal on ground (a) fails but that the appeal on ground (g) succeeds. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A Harwood

INSPECTOR