
Appeal Decision

Site visit made on 24 February 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2020

Appeal Ref: APP/T5150/C/19/3235514

Olympic House, 3 Olympic Way, Wembley HA9 0DL

- 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 Pinnacle Developments Limited against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0228, was issued on 9 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use from offices to a mixed use as offices and event day car parking (i.e. parking that is not ancillary to the office use) ("the unauthorised change of use")
 - The requirements of the notice are:
 - STEP1 Permanently cease the use of the land/premises as an event day car park
 - STEP2 Do not use the premises for car parking except for parking that is ancillary to the lawful use of the land/premises.
 - STEP3 Remove all vehicles from the premises, except those which are associated with the lawful use of the premises.
 - STEP4 Remove all advertisements and signs associated with the unauthorised change of use.
 - STEP5 Remove all other items associated with the unauthorised change of use.
 - The period for compliance with the requirements is one week.
 - The appeal is proceeding on the grounds set out in section 174(2)[a] and [c] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, and the notice is upheld.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c)

3. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
4. The appellant argues that the use of the car park is permitted development under Schedule 2 Part 4 Class B of the Town and Country Planning (General Permitted Development) Order 1995 because it constitutes the temporary use

of land. On the other hand, the Council say that this use is not permitted development because the car parking falls within the curtilage of a building which is expressly excluded by Paragraph B.1.

5. The site which is identified on the plan attached to the notice shows land to the front and the rear of Olympic House which fronts Olympic Way. Access between the two parking areas was via an undercroft which forms part of the building. In my view the car parking areas are part of the curtilage of the office building, thus their use for a 28-day period does not amount to permitted development.
6. The appellant refers to case law regarding curtilage in support of his arguments. Notwithstanding that the cases which are cited refer to residential curtilage, the matter of whether or not something falls within a curtilage remains a matter for the decision maker which was the Council in terms of issuing the notice and now falls to me. Furthermore, it has now been established that a curtilage is not necessarily a 'small' area.
7. Even if I were to conclude that the car parking areas do not form part of the curtilage of the building the appellants have not provided any evidence to show that the use was temporary and the rights under Class B were genuinely implemented. By contrast the appellants state their intention to 'regularise the temporary use of the car park beyond the 28-day period' which undermines their position that the use amounts to permitted development. The tolerances set out in Part 4 do not apply when the intention is that development should be permanent. On this basis the use also does not amount to permitted development.
8. I conclude that the appellants have not demonstrated on the balance of probabilities that the matters alleged in the notice do not constitute a breach of planning control. The appeal under ground (c) fails.

Ground (a) and the Deemed Planning Application (DPA)

9. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Procedural Matter

10. The Borough Plan – Building a Better Brent 2019-2023 (the emerging Local Plan) has been published but has yet to be examined and found sound. It only attracts limited weight in my determination of the appeal under ground (a) as a further material consideration.

Main Issues

11. The main issues are:

- whether or not the mixed use of the site as offices and event day car parking is harmful to the status of the area as a growth area and Strategic Cultural Area for London with particular regard to managing the amount of car parking
- the effect of the development on the living conditions of existing residents and the amenity of business occupiers, with reference to movement, noise, disturbance and air quality

Reasons

Wembley Growth Area (WGA)

12. Policy CP7 of the London Borough of Brent Core Strategy (2010) (the Core Strategy) identifies Wembley as a growth area which will drive the economic regeneration of Brent and the adoption of the Wembley Area Action Plan (2015) (WAAP) which is a Supplementary Planning Document furthers this aim. The Council says that one of the key issues in the growth area is the management of car and coach access and car parking.
13. Following the redevelopment of the stadium the Council states that the amount of car parking at the venue has been reduced to alleviate congestion and minimize disruption to the local community by visitors to the stadium. In its view the provision of additional event day parking which results from the development would run counter to this aim.
14. The site is very close to the stadium and notwithstanding the congestion which the Council highlight as a significant strategic issue, it is an attractive location for anyone visiting an event given its proximity to the entrances. As such the use for event day car parking would undermine the Council's initiatives which are focussed on controlled growth within in the WGA including access to the area on event days and use of non-car modes of transport.
15. The appellant argues that there is planning policy support, including the emerging Local Plan, for temporary uses which will benefit the town centre's vitality and viability and that such 'meanwhile' uses can have social and economic advantages. However, there is no evidence to demonstrate how those benefits may be derived from the development. Similarly, while there is reference to the space being used for community events there are no details regarding how this would be realised. Consequently, these arguments do not outweigh the harm to the strategy which seeks to control car parking and promotes access by non-car modes.
16. Given that the site is currently vacant in terms of the office use, the event day parking would bring activity to the site as cited by the appellants. However, I am not convinced that this is the only way in which the currently vacant use could be changed to benefit the area. Furthermore, the use as event day parking would by its nature coincide with conditions when the character of the area is at its most vibrant and at other times given the unoccupied state of the offices, the car park would not generate any activity.
17. The appellant points to the fact that the development would not result in a loss of employment floorspace and argues that use of a small part of the site for event day car parking would be in keeping with the WGA. There is no dispute between the parties that the development would not lead to a loss of employment floorspace, consequently this point neither weighs in favour nor against the development. With regard to the scale of the operation, there is no explanation of the extent of the car park which would be restricted to event day parking or substantive evidence to demonstrate how a controlled small-scale operation would be in accordance with the aims of the WGA.
18. I conclude that the use of the site as offices and event day car parking is harmful to the status of the area as a growth area and Strategic Cultural Area for London with particular regard to managing the amount of car parking. The

development is contrary to Policy CP7 of the Core Strategy and for similar reasons it does not accord with the WAAP.

Impacts on residents and businesses

19. The appeal site fronts Olympic Way which is one of the key thoroughfares providing access to the Wembley stadium complex. The area surrounding the site is undergoing redevelopment and there are both established and recent residential developments off North End Road which provides vehicular access to the site.
20. The Council considers that the use of the car park for event day parking will encourage more cars on the road during event days and that this will lead to congestion, a reduction in the attractiveness of public transport, walking and cycling and a deterioration in air quality. It is also concerned about the effect on on-street car parking demand. Whilst these impacts may arise from the use there is no substantive evidence to quantify the effects or to show how they would adversely affect residents and the operators of local businesses.
21. The appellant submits that during its operation the levels of noise and disturbance associated with the mixed use would be comparable with the office use and that there are limited residential buildings close to the site. Again, there is no evidence to support these points or to provide further assurance that local residents and business operators are not adversely affected by the use for event day car parking.
22. On the basis of the evidence before me I am unable to conclude whether or not the development has a harmful effect on the living conditions of existing residents and the amenity of business occupiers, with reference to movement, noise, disturbance and air quality. However, even if I were to conclude that the development would not be harmful to living conditions and amenity, this would have a neutral effect on the overall planning balance and would not outweigh the harm which I have identified in terms of the impact on the WGA.

Other matters

23. The appellant considers that planning conditions could be attached to any consent to control the operation, management, including marshalling, and security of the event day car parking use. There are no details of the suggested conditions before me. Whilst such conditions may improve the way in the car park is operated this would not outweigh the harm to the WGA in terms of the use.
24. The appellant also argues that the event day car parking would allow access to Wembley by users who would not otherwise be able to access such events. However, there is no information setting out the profile or number of such customers or to show that their needs cannot be met by other facilities in the area. On this basis this argument carries little weight in favour of the appeal scheme and does not outweigh the harm that I have identified in terms of one of the main issues.

Conclusion in respect of ground (a) and the DPA

25. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Sarah Dyer

Inspector