The Planning Inspectorate

Appeal Decision

Site visit made on 5 August 2020

by Simon Hand MA

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

Decision date: 22 October 2020

Appeal Ref: APP/T5150/C/19/3239488
Kelly House, Fourth Way, Wembley, HA9 0LH

- 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 Kelly Property Company Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/19/0606, was issued on 17 September 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from office to a mixed use as office and public car park (i.e. parking that is not ancillary to the office/industrial use).
- The requirements of the notice are STEP 1 Cease the unauthorised use as a public car park. STEP 2 Remove ALL vehicles from the premises, except those which are associated with the office use, from the premises. STEP 3 Remove ALL advertisements and signs associated with the unauthorised use from the premises. STEP 4 Cease the use of online booking systems and advertisements associated with the unauthorised use. STEP 5 Remove all other items associated with the unauthorised use from the
- premises.
- The period for compliance with the requirements is 1 week.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

The Appeal on Ground (c)

2. This ground is that the matter alleged benefit from planning permission, in this case either it is permitted development or it is ancillary to the use of the office building.

3. Kelly House is a substantial office building set back from the road and surrounded by open flat land. The office block occupies the left hand half of the site and the frontage contains a hard surfaced car park. Access down the side leads to a rear area also used as a car park. The right hand half of the site is flat and covered in hardstanding and used as a car park. There is no doubt the front and rear car parks on the left hand half of the site are within the curtilage of the office block and are used for ancillary car parking. It is the use of all of the right hand half of the site for car parking that is at issue.

4. Class B of Part 4 of Schedule 2 of the General Permitted Development (England) Order 2015 allows the temporary use of land for any purpose for not more than 28 days a year. The restriction to 14 days is not relevant here. The

appellant argues the use as a public car park is only on event days for parking for Wembley stadium and there seems no reason to doubt this. These events, according to the appellant, are held on less than 28 days a year and so the use of the land is permitted development. However, B.1(b) provides that development is not permitted if the land is within the curtilage of a building. The appellant says it isn't, the right hand side of the site is separate from the left hand and forms a separate planning unit. I agree with the Council that this is not the case. While the right hand side may have a different surface to the left it clearly is related functionally and spatially to the office block. A previous enforcement decision[1] on the site noted the right hand side "*has its own separate gated entrance, which has the effect of subdividing the enlarged area [*the right hand side*] from what the Council has actually taken enforcement action against [*the left hand side*]*". However, this is not a finding that the land is a separate planning unit or not within the curtilage of the office. It was made in connection with the enforcement notice plan which only covered half the site and which led to the notice being quashed.

5. It does not seem to me there is any evidence for a separation of the two halves over time. On my site visit I saw the only way to access the right hand half was through the left hand side, and it appeared to be used purely in conjunction with office. In my view therefore the two halves of the site form one curtilage surrounding the office building. Therefore, regardless of the actual number of days the parking is used for Wembley events, the use is not permitted development because of the restriction of B.1(b).

6. Clearly the use for parking for events at Wembley stadium is not related in any way to the office use and cannot be considered to be incidental or ancillary. By the same token, such a use is materially different from the use of office car parking. The Council has strict policies in force to encourage the use of public transport for those attending events at Wembley and limit parking to official car parks. The use of the land for event parking generates a large number of car trips on certain days, and in particular a large influx of vehicles onto the road system at the end of the event. This is materially different to the use of the land as an office car park, which would not generally be an evening use, and where comings and goings would be more staggered across the day. I have no evidence as to the operating hours of Kelly house, or whether it houses more than one business, but few offices in modern times operate on a strict 9-5 time keeping, thus spreading comings and goings out across the day.

7. Consequently I find the use of the land for event car parking is not permitted development and does represent a material change of use that requires planning permission. The appeal on ground (c) fails. I shall dismiss the appeal and uphold the notice.

Simon Hand

Inspector

[1] APP/T5150/C/18/3219186 Issued 27 September 2019