



Appeal Decision

Inquiry Held on 16 February 2021

Site visit made on 2 February 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Appeal Ref: APP/T5150/C/19/3237332

Land next to 1 Mirage Centre AND ADJACENT to Latif House, First Way, Wembley HA9 0JD ("the premises" shown outlined bold in BLACK on the plan attached to the notice)

- 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 Ali Latif (Latif House) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0155, was issued on 23 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use from office/industrial/warehouse to a mixed use as office/industrial/warehouse and Wembley Event Day Parking (i.e parking that is not ancillary to the office/industrial use).
 - The requirements of the notice are to:
 - STEP 1 Permanently cease the use for of the land for Wembley Event Day Parking.
 - STEP 2 Do not use the premises for car parking except for parking that is ancillary to the office/industrial/warehouse use of the premises.
 - STEP 3 Remove all vehicles from the premises, except those which are associated with the lawful uses of the land/premises.
 - STEP 4 Remove all advertisements and signs with Wembley Event Day Parking
 - STEP 5 Remove all other items associated with Wembley Event Day Parking.
 - The period for compliance with the requirements is 1 week.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) and (d) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. It is directed that the enforcement notice be corrected by:
 - Replacing "(i.e parking that is not ancillary to the office/industrial use)" with (i.e parking that is not ancillary to the office/industrial/warehouse use)" in SCHEDULE 2; and
 - Removing the word "for" after the word "use" in STEP 1 of SCHEDULE 4.
2. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld.

Procedural matters/the enforcement notice

3. It is clear from the way that the sentence forming the allegation in SCHEDULE 2 of the enforcement notice has been drafted that it seeks to attack Wembley Event Day Parking as a primary use of the land within a mixed use. It is further apparent that the parenthesised words at the end of the sentence seek to confirm that the targeted use involves parking that is not ancillary to

that which the beginning of the sentence provides as the 'base primary use(s)' of the land (that is to say, the primary use(s) before the alleged material change of use occurred). However, the word "warehouse" has been omitted within the parenthesis.

4. At the inquiry, the Council confirmed the drafting error and invited me to use my power to correct it¹. The appellant, when asked whether such a correction would cause him any injustice said that he didn't think so and was happy for the correction to be made. Taking the views of the parties into account, I do not consider that this correction would cause either party injustice as it would serve to put the notice in order by providing greater clarity of the allegation, and the 'base use(s)' (office/industrial/warehouse) is not disputed by the appellant. Therefore, I am using my power to correct the notice so that the 'base use(s)' is the same at the end of the sentence as it is at its beginning.
5. I am also using my power of correction to remove a superfluous 'for' from STEP 1 of SCHEDULE 4 since it is clearly a simple typographical error, being satisfied that its removal will provide a clearer sentence with no injustice to any party.
6. Mindful of reducing the risk of Covid-19 transmission amidst the current pandemic, I conducted an unaccompanied site inspection in advance of the inquiry opening. This was sufficient for the purpose of determining the appeal. Nevertheless, I enquired with the parties at the inquiry whether they requested that I conduct an accompanied site inspection during or after the close of the inquiry² and they confirmed no such requests were to be made.
7. The appellant told the inquiry that, in addition to a Wembley Event Day Parking business conducted by him on land within his interest (on a western part of the appeal site, to the south of the Latif House car park as tinted red in the figure found in paragraph 2.3 of his statement), some of the Council's photographic and witness evidence related to an entirely unconnected Wembley Event Day Parking operation conducted by somebody else on the remaining part of the appeal site outside of his control. During cross-examination, the appellant's replies to questions suggested in fact that more of the appeal site than had been indicated in his statement was within his interest (including land associated with HV House to the east of the tinted red area, with the latter providing an access road to HV House and to the adjacent Mirage Centre). Further, and notwithstanding what the appellant told the inquiry about it being inaccurate and/or outdated, the website for his business Wembley Parking Limited (WPL) clearly shows the whole of the appeal site contained within maps of the parking operation³.
8. However, notwithstanding these ambiguities in the appellant's evidence, it is not determinative of success under any ground of appeal that the matter alleged in the notice was due to somebody else other than the appellant. The appellant does not dispute, for instance under ground (b), that the matter alleged in the notice has not occurred. Nor is it determinative of the success of the appeal whether or not the appellant has an interest in the whole of the land within the appeal site.

¹ Section 176(1) of the Act

² Rule 18, The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002

³ Appendix 6, pp97-98, of the Council's proof of evidence

9. The appellant had made an earlier appeal⁴, dismissed in August 2018 following an inquiry, against an enforcement notice issued in respect of non-ancillary car parking on office/industrial land to the north of the appeal site and entirely separate from it. He also had made an appeal⁵, subject to the same inquiry and also dismissed, against the refusal of a Lawful Development Certificate (LDC) application for non-ancillary car parking on office/industrial land. The area covered by the LDC application included part of the area covered by the enforcement notice in the dismissed appeal, as well as land in the area tinted red referred to in the paragraphs above and within the site in the appeal before me. The appellant's statement says that he complied with the earlier enforcement notice (the compliance date as regards event parking was 13 August 2018 following variation by the Inspector), but that as the tinted red area was outside the notice plan he continued to use it for event parking.

Ground (c)

10. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that the matter alleged in the notice (if it occurred) does not constitute a breach of planning control.
11. In cases where there is a dispute as to whether a material change of use has occurred, it is first necessary to ascertain the correct planning unit. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of change.
12. The unit of occupation is the most convenient starting point in identifying the relevant planning unit because that is normally the largest unit in which a set of functionally and physically interdependent activities are carried on. A smaller unit in the same occupation may be identified where there is a functional and physical separation of activity. It may also be possible and necessary to select a larger unit where there is a set of inter-related activities through separate ownership and occupation of different parts of a site. The matter is one of fact and degree.
13. In this instance the circumstances justify defining a larger area as I am satisfied based on the Council's observations and evidence that, despite different parts of the land apparently being in separate ownership or occupation, the event day parking is occurring across the appeal site as a whole as identified in the enforcement plan (not disputed by the appellant, other than he says somebody else is responsible for that activity on land outside of his interest). I have heard, and accept, evidence from the Council that vehicles are marshalled from First Way across to the whole of the site for the purposes of event day parking within and therefore I am satisfied that there is a physical and functional connection across the site concerning that use.
14. It is not appropriate to include open land to the north of the appeal site as part of the planning unit, including the Latif House car park physically separated on the other side of a fence, as I accept the appellant's evidence that it has not been used for event day parking in compliance with the earlier enforcement notice and so is not functionally or physically connected in this regard.

⁴ APP/T5150/C/17/3170810

⁵ APP/T5150/X/17/3179530

15. There is no dispute that the land within the appeal site is used to provide ancillary parking in connection with primary office/industrial/warehouse uses within nearby buildings. From my site visit there appeared to be a clear ancillary parking connection with the Mirage Centre and HV House directly adjacent to and associated with the appeal site, including the tinted red area (referred to by the appellant as a slip road) providing access to those buildings. As it is well-established law that an ancillary use cannot be in a separate planning unit to the primary use to which it is functionally connected it is my judgement, taking all into account, that the planning unit relevant to this appeal is the land identified in the enforcement plan together with the Mirage Centre and HV House. There is no need for me to amend the enforcement plan to reflect the planning unit as an enforcement notice does not have to be directed at the whole unit or indeed to identify it. The planning unit is to be used to assess the materiality of change.
16. The appellant's evidence suggests he uses the planning unit for event parking of up to 13 vehicles (and he asserted at the inquiry that there was further event parking on the site undertaken by another). The Council's evidence is that the unit is used for event parking of up to around 20 vehicles. The question is whether this degree of event parking has caused a material change in the use of the planning unit. For a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. Further, a relevant consideration is off-site effects.
17. Even at the level of event parking indicated by the appellant's stated use alone, there would be a material difference as compared to ancillary parking in connection with the lawful uses of the planning unit. The parking of 13 vehicles in the relatively limited space indicated by the appellant would be fairly tight, and would require co-ordination and marshalling within fairly narrow time windows before and after events to ensure that vehicles could arrive and leave without being blocked by others. Further, event parking is more likely to attract people unfamiliar with the area with arrivals and departures concentrated into short periods of time. Marshalling and parking management would be obvious and necessary to direct traffic off the highway and to available spaces, as seen in the Council's photographs. This is a significant difference in the character of activities undertaken.
18. Further, event parking in the area has been identified by the Council as undermining its parking restraint policy including the development of the new Wembley Stadium as a public transport venue through the Wembley Area Action Plan. In that regard I also note that the previous inquiry in 2018 heard that car parking for events at the Stadium is officially limited with the aim of easing pressure on the highway infrastructure and encouraging use of public transport to secure environmental improvements. In my judgement, the appeal development frustrates these aims and contributes to the off-site effects it seeks to prevent in encouraging private vehicle journeys to and from the area on event days beyond that envisaged in the strategic redevelopment of the Stadium and local infrastructure.
19. For these reasons, the appellant has not persuaded me on the balance of probabilities that there has not been a material change of use of the land. The appeal on ground (c) therefore fails.

Ground (d)

20. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that at the time the notice was issued it was not possible for the Council to take enforcement action in respect of the alleged material change of use. Section 171B of the Act provides that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
21. In essence, the appellant's case is that at the date the notice was issued (23 August 2019) he had been operating event parking within the appeal site continuously for a period in excess of 10 years. In support of this, he has submitted evidence that was before the 2018 inquiry (upon which the Inspector found a material change of use to non-ancillary car parking had occurred in May 2007) as well as additional evidence to support his argument of continuous use since.
22. However, and significantly, the Inspector in the 2018 inquiry identified the planning unit in that enforcement notice appeal to be to the north of and entirely outside the appeal site and the planning unit in the appeal before me. Clearly, evidence of historic use for non-ancillary car parking is only relevant to the appeal before me if it relates to the planning unit under consideration.
23. Notwithstanding the above, I accept what has been said by the appellant that the tinted red area shown in his statement (within the planning unit identified in this appeal) was part of the LDC application area and that it was clarified to the Inspector at the inquiry by way of an additional plan which she noted and refers to in paragraph 77 of her decision. On that plan (Appendix LPA6 of the Council's statement) some parking spaces are coloured green and the key identifies the green spaces as "commercially relevant car park spaces". For the purposes of this appeal, 5 car parking spaces are identified on that plan within the appeal site and planning unit. 2 of them are coloured green.
24. The appellant has said in his submissions on this appeal that the 2 spaces that were coloured green on the plan were used solely in connection with event parking, but that also the uncoloured spaces were sometimes used for event parking dependent upon the lease/licence arrangement with the persons ordinarily parking there. The Council is very clear that is not what the appellant told the previous inquiry. Significantly, it is clear from my reading of the Inspector's decision at paragraph 78 that the LDC sought was use of the site as a 'commercial car park' where contract and/or event parking is provided. When the additional plan is considered within this context, it is readily understood that the 2 green "commercially relevant" coloured spaces were those alone which the appellant was stating were used for those purposes and no other spaces were used as such.
25. The use of 2 car spaces for event parking over the entire planning unit would not in my judgement result in its material change of use as it is unlikely such limited activities would cause any materially discernible change to the character of the land. Further, off-site effects from such a low number of vehicles would in my view be *de minimis*.

26. It would appear therefore that at some point after the 2018 inquiry, the material change of use I have referred to in dealing with ground (c) occurred. The Council says that this was a result of the appellant's event day parking operation moving south as a result of the need to comply with the 2017 enforcement notice upheld as a result of the 2018 inquiry. However, it is not necessary for me to take a view as to exactly when it occurred – just that the appellant has not been able to demonstrate on the balance of probabilities that it occurred before 23 August 2009, being the date 10 years before the issue of the enforcement notice in this appeal.

27. Accordingly, the appeal on ground (d) fails.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr Ali Latif (appellant, advocate and witness)

FOR THE LOCAL PLANNING AUTHORITY: Mr Nigel Wicks MRTPI (advocate and witness)

INTERESTED PERSONS: None

DOCUMENTS submitted at the inquiry

- 1 Closing submissions on behalf of the Local Planning Authority
- 2 Closing statement for the appellant