



Appeal Decisions

Site visit made on 23 August 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30TH AUGUST 2023

Appeal A: APP/R5510/C/22/3302345

Appeal B: APP/R5510/C/22/3302346

Land lying to the north west of Harefield Road, Uxbridge UB8 1PW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Frank Peters and Appeal B is made by Robert Peters against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice, numbered HS/ENF/020372, was issued on 27 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the use of the land for the parking and stationing of motor vehicles, at land lying to the north west of Harefield Road, Uxbridge, Middlesex, UB8 1PW ("the breach").
 - The requirements of the notice are (i) cease the use of the land for the parking and stationing of motor vehicles; (ii) remove from the land all motor vehicles associated with the unauthorised use of the land for the parking and stationing of motor vehicles; (iii) remove from the land all other materials, equipment, machinery, tools and paraphernalia that facilitate the unauthorised use of the land, and (iv) remove from the land all fixtures and fittings, waste and building materials together with all plant, equipment and machinery used in compliance with requirements (i) to (iii) above as appropriate.
 - The period for compliance with the requirements is 3 calendar months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). Appeal B is proceeding on the grounds set out in section 174(2) (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. In respect of Appeal B, since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeal A: APP/R5510/C/22/3302345

1. The appeal is allowed and the enforcement notice is quashed.

Appeal B: APP/R5510/C/22/3302346

2. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

3. On my site visit, I was able to see that the site was being used in a different way to that which had taken place when the Notice was issued. The northern part of the site was being used by a different tenant and there were various structures/containers on this part of the site. However, there was evidence of

fairground equipment on the part of the site further south. For the avoidance of doubt, I have determined this appeal based on the alleged breach of planning control that had taken place when the Notice was issued. The use of the site now is not relevant to the determination of this appeal.

The Notice

4. The Notice alleges the '*use of the land for the parking and stationing of motor vehicles*'. In effect, it alleges use of the land as a car park. A Notice alleging a material change of use, as is the case for this appeal, need not recite the previous use, but it is better if it does so to make it clearer why the local planning authority (LPA) considers there has been a material change.
5. I have considered the aerial photographs submitted by the LPA, as well as the signed witness statements from the appellants and other parties, including in particular the Business Improvement Development Manager (BID Manager) for Uxbridge.
6. The evidence indicates that when the Notice was issued, the site was in one ownership. Aerial photographs show various vehicles and equipment within the red edged land since 2013. Such vehicles and equipment are shown in Google Earth Pro aerial photographs dated 2013, 2015, 2017, 2018, 2019 and 2020.
7. There are photographs submitted by the LPA dated 2 July 2014 showing the storage of fairground equipment and the parking of associated vehicles, primarily to part of the northern section of the site. To the south of the site there appears to be a digger and then a trailer which has the appearance of being recently sprayed or painted. The 2013 Google Earth Pro aerial photograph shows what appears to be equipment and/or vehicles in blue, red and yellow colours to the southern extent of the site. This may be fairground equipment, but equally it could be vehicles.
8. The BID Manager for Uxbridge, who worked in such a capacity since 2011, states in his witness statement that '*when I started working in Uxbridge there was a history of the Council's Street Licensing for market day and events in Uxbridge to strongly encourage the use of Frank Peters yard for the parking of vans as there was no other adequate location*'. The BID Manager concludes that '*the use of Frank Peters yard by the local business and community commenced before I started working in 2011 and has continued consistently since then*'.
9. While I have not been provided with any aerial photographs that pre-date 2013, the LPA does not dispute that fairground equipment has been on the land since this time and for several years. The position has been clarified further, at my request, in post-appeal correspondence sent to the Planning Inspectorate in terms of the specific use of the site when the Notice was issued. The appellant commented on 23 February 2023 that '*at the time the enforcement notice was issued, the appellant had equipment for weekly use in Uxbridge high street and Hemel Hempstead high street, which included a ski jump, teacups, six bed trampolines, ladybird ride, mobile stage, airplanes, bungee trampolines and carousel rides*'. In response to the same question, the LPA commented on 22 February 2023 that '*when the notice was issued (27th May 2022), restricted photographs of the site were taken by the Council. This was because access to the site was denied, and the entrance gates were closed off*'.

10. The LPA does not dispute the appellant's comment that fairground equipment was on the site when the Notice was issued. There is nothing compelling before me that casts doubt about the appellants' contention that when the Notice was issued, the site also included fairground equipment. While the LPA did take some photographs, they do not show the whole of the site. I therefore find, and as a matter of fact and degree, that when the Notice was issued the breach of planning control involved a mixed use falling within one planning unit. The evidence is that the site was in a mixed use comprising (i) the storage of fairground equipment with the ancillary parking of vehicles and (ii) use for the parking of motorised vehicles.
11. The evidence is that when the Notice was issued the land was specifically in use for the parking of motor vehicles in association with a mini-bus operation (i.e., Crown Cars). I cannot be sure if the land was also being used as a car park by others, including market traders, when the Notice was issued. Indeed, the LPA provide no final comments in response to the appellants' detailed statement of case about these matters. However, any such car parking use would, in any event, fall within the description of the alleged breach of planning control.
12. The appellants state that they bought the land in 2006. They say that from this time they have used it continuously for the purpose of storing fairground equipment. The photographic evidence supports such a use since at least 2013. Furthermore, and as detailed above, I find, as a matter of fact and degree, that the evidence does indicate that when the Notice was issued the fairground equipment storage use had not stopped. It is noteworthy that such a use was still being carried out as part of my site visit.
13. While I acknowledge that ground (d) appeals have been lodged, it has not been necessary for me to reach a conclusion on this matter. This is because it is first necessary for me to ensure that the Notice is in order. Given my reasoning above, I find, on the evidence that is before me, that the allegation in the Notice is incorrect. It should have referred to a mixed use including the storage of fairground equipment.
14. Based on the appellants' signed witness statements, the evidence does indicate, in my judgment, the '*storage*' of fairground equipment as distinct from the '*parking*' or '*stationing*' of it. Indeed, reference is made by the appellants to the '*loading*' and '*off-loading*' of such equipment, and this has not been disputed by the LPA. Even if this was not deemed to be a storage use, the allegation refers to the parking and stationing of '*motor vehicles*'. A motor vehicle is quite clearly not a piece of fairground equipment.
15. I have considered whether I could correct the allegation in the Notice without injustice being caused to the main parties. I do not find that I can correct the allegation in the notice to refer to a mixed use as this would have a bearing on how the ground (a) appeal has been prepared and considered in respect of Appeal A. Furthermore, there may be prejudice caused to the LPA as this would deny it the opportunity of considering, should it be necessary, underenforcing in respect of the fairground equipment element of the mixed use.
16. An appeal has not been lodged under ground (b) of s.174(2) of the Act, i.e., that the matters mentioned in the allegation have not occurred. However, and given my reasoning above, there is a hidden ground (b) appeal. On the evidence before me, I conclude that the matters alleged in the notice have not

occurred. Consequently, both appeals fail under ground (b) and the Notice should be quashed.

Conclusion – Appeals A and B

17. For the reasons given above, I conclude that the appeals should succeed on ground (b). Accordingly, the enforcement notice will be quashed. In these circumstances the appeals under the various grounds set out in section 174(2) to the 1990 Act as amended, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended, do not need to be considered.

D Hartley

INSPECTOR