



Appeal Decision

Site visit made on 17 October 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2023

Appeal Ref: APP/T5150/C/22/3306217

Land on Empire Way at junction of Fulton Road, Wembley HA9 0TF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Wembley City Hix Limited against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/22/0207, was issued on 26 July 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to a car park ("the unauthorised change of use").
- The requirements of the notice are to:
 - Step 1 – Cease the use of the premises as a car park.
 - Step 2 – Remove all vehicles from the premises/land.
 - 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 after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is allowed in part. Subject to variations, the enforcement notice is upheld and planning permission is refused.

Application for costs

1. An application for costs has been made by the Council of the London Borough of Brent against Wembley City Hix Limited. That application is the subject of a separate Decision.

Preliminary Matters

2. The appeal was made on 4 grounds. However, the appellant has subsequently withdrawn the appeal on ground (d). Therefore, the appeal is proceeding only on grounds (a), (f), and (g).

The Notice

3. The enforcement notice (the Notice) defines the land or premises affected as "the premises". The premises are, then, referred to consistently throughout the remainder of the Notice except in step 2 of the requirements where there is reference to the premises/land. Land is not a defined term within the Notice. In the interests of clarity, therefore, I shall vary the Notice to remove reference to the land from step 2.

Ground (a)

4. The appeal on ground (a) is that planning permission should be granted for the matters alleged in the Notice. In the reasons for issuing the Notice, the Council have alleged harm to the safety and security of residents and visitors stemming from the unauthorised use. The wider evidence in the appeal makes clear that this could arise from effects on highway safety and traffic congestion. With regard to this and the other reasons for issuing the Notice, the main issues under this ground are:
- The effect on highway safety and traffic congestion in the locality;
 - The effect on air quality; and
 - The effect on living conditions of nearby residents and local businesses, with particular regard to noise and disturbance.

Highway safety and congestion

5. The site is accessed via a pre-existing vehicular footway crossover off Empire Way, a main vehicle route through the area, and by a pedestrian gate onto Fulton Road. While there is no suggestion that pedestrian movements to and from the site have any harmful effects, the vehicular access is close to the junction of Empire Way and Fulton Road.
6. There are numerous footway crossover-type access points along Empire Way and, notwithstanding pedestrian priority that the Council is seeking to achieve along this route, there is no particular evidence that vehicles using these, including that at the appeal site, cause harm to pedestrian safety.
7. Whether or not there is an existing lawful use of the site now, the site has historically been used for commercial uses that included car parking with an access at this point. More recently it has been used as a construction compound for nearby development. While the previous car park may have been ancillary to other uses of the site and the compound use may not have had planning permission, there is no substantive evidence that traffic movements to and from the site have ever caused highway safety problems. Therefore, whether traffic arrives and departs on a staggered or concentrated basis, on the available evidence, I find that the car park use causes no harm to highway safety.
8. Nevertheless, the Council and appellant have both set out elements of the wider traffic management measures throughout the Wembley stadium/arena (the Stadium) area, particularly on 'event days'. The Stadium, which is very close to the appeal site, is said by the Council to be a public transport venue with restrictions designed to ensure the area remains congestion free, to minimise disruption to the local community. The appellant has explained how the strategy focusses on designated, 'official', car parks for particular uses and locations.
9. It is likely that there will always be some visitors to the Stadium and wider area that are unable to use public transport. However, Policy BT2 of the Brent Local Plan 2022 (BLP) contains a specific requirement that new public off-street parking is only permitted where it has been supported by a transport assessment and shown to meet a need that cannot be met by public transport. While the appeal site could add choice to the existing mix of parking, there is

no substantive evidence before me of the type expected by Policy BT2. That the car park has had a good occupancy rate could be down to a range of factors such as pricing and specific location and by itself, is not an indicator that an increase in provision is required.

10. Compared to the capacity of the Stadium and other car park provision, the appeal site provides a relatively small number of parking spaces, and it may be that, without it, customers would continue to travel to the area by car. However, The Council's uncontested evidence that this appeal relates to one of around 30 similar enforcement notices covering over 8000 unauthorised spaces, indicates that there could be very significant cumulative effects arising from developments such as this one. While the development does not prevent people using public transport, collectively, increased parking provision in the locality could begin to foster modal shift towards car-based travel and the appeal site, however small, is part of that provision.
11. Therefore, I find that the unauthorised use of the appeal site would increase traffic flows and, therefore, the potential for congestion in the area. Consequently, there is a conflict with those parts of BLP Policy DMP1 that seek to prevent adverse impacts on the movement network. In the absence of an identified need for the provision, there is also conflict with BLP Policy BT2.
12. BLP Policy BCGA1, cited within the reasons for issuing the notice, does not specifically refer to the need to foster safety and security of residents and visitors, nor does it refer to traffic management and highway safety. Rather it is a policy that seeks to guide the redevelopment of the wider Wembley Growth Area towards a high quality, urban, connected and sustainable city quarter. While the development may contribute to some growth aims, an area that suffers from congestion would not be high quality or well connected. Therefore, I find that the unauthorised use also conflicts with the aims of Policy BCGA1 when read as a whole.

Air quality

13. There is no substantive evidence to cast doubt over the Council's suggestion that current air quality in the area is poor. Nor is there any detail of the likely contribution that this development makes to emissions. I understand that mitigation was not required in respect of some of the wider redevelopments in the area, and that the surrounding new development would likely have well-controlled ventilation systems to provide good internal air quality.
14. However, as I have found that the use is likely to contribute towards increased private car movements in the area, it follows that greater emissions would also likely result, that could harm outdoor air quality. There is, therefore, conflict with those aims of BLP Policy DMP1 and Policy SI1 of the London Plan 2021 that seek to ensure that development does not unacceptably increase pollution.

Noise and disturbance

15. The area around the appeal site is busy and fairly noisy. The site is accessed from a major thoroughfare, there are other commercial uses in very close proximity, including a theatre and leisure centre, that would also generate significant movement. Notwithstanding the general increases in traffic movements in the wider area that could result from this and similar developments, given this context, it is not clear why there would be any

perceptible effect on the noise environment in the immediate locality of the site. Therefore, it has not been shown that this particular development would adversely affect living conditions or nearby businesses as a consequence of noise and disturbance.

16. Accordingly, I find no conflict with those aims of BLP Policy DMP1 that seek to prevent increases in exposure to noise and provide good living conditions.

Other matters

17. The National Planning Policy Framework (the Framework) outlines that sustainable development has three dimensions that would be met through complying with the policies of the Framework read as a whole. The Framework's policies support the delivery of high-quality neighbourhoods, seek to reduce reliance on private transport, and ease congestion, particularly in well-connected urban locations. Therefore, even if there were some economic benefit arising from additional car parking in the locality, the use would conflict with the Framework when read as a whole.
18. The presence of hoardings around the site means that there is little visual difference in the car park use compared to its position as a vacant building plot. I also understand that there is an extant permission for the redevelopment of the site that would include hotel and restaurant uses as well as car parking, and the unauthorised car park was intended as an interim use until the development came forward.
19. However, that car park accompanying the redevelopment is likely to operate in support of those particular uses rather than facilitating travel by car into the area more generally. Therefore, the effects of such are likely to differ from the general car park use subject of this appeal. Accordingly, I attribute very little weight to the prospect that some parking may take place at the site in the future.

Conclusion on ground (a)

20. While I have found no harm to living conditions or local businesses in the area, the use would likely contribute to increased car-based travel and consequential congestion in the area which would also be prejudicial to the development of a high quality city quarter in the Wembley Growth Area. I, therefore, find that the use conflicts with the development plan, read as a whole.
21. It would be possible to impose conditions on any grant of planning permission, such as allowing the use for a temporary period, limiting the number of spaces available, or times of operation. However, any continued use of the site would add to the parking provision in the area, at odds with the aims of the development plan. Controls over traffic movement or the use of barriers in and around the site would not address this issue. Conditions would not, therefore, overcome the harm that I have identified.
22. There are no other material considerations that have been shown to indicate that a decision should be taken otherwise than in accordance with the development plan. Accordingly, the application deemed to have been made under Section 177(5) of the 1990 Act should be refused and the ground (a) appeal should fail.

Ground (f)

23. An appeal on ground (f) is that the steps required to remedy the breach are excessive and lesser steps would achieve that purpose. The appellant has made various suggestions that they say could reduce the level of any harm, such as allowing the use for a temporary period of time or reducing the scale of parking provision. I have considered those in respect of the ground (a) appeal because, regardless of the conclusions that I made in that regard, such steps would not remedy the breach of planning control, which is the purpose of the Notice.
24. Nevertheless, the appellant has also suggested that steps 2 and 5 are excessive. The site has been cleared of buildings associated with the previous uses prior to redevelopment. In the absence of either that previous use, or any future use, there is no clear reason why vehicles would need to be parked at the site now. However, in the interests of clarity, and to ensure that the requirements of the Notice are no more than is required to remedy the breach of planning control, I shall vary step 2 to clarify that only vehicles on the premises in connection with the unauthorised use need to be removed.
25. Step 5 is all-encompassing, seeking removal of anything else associated with the use. It is not clear what the Council had in mind here and, at my site visit, there was very little on the site except a number of concrete blocks, some of which are anchoring the boundary hoardings. While others appear to be delineating an access roadway, it is not clear that they are actually on the site in connection with the unauthorised use and the Council has not referred to them specifically. There was nothing else obviously connected with the unauthorised use at the site.
26. From my observations, therefore, I find that step 5 is unnecessary. I shall delete it from the requirements and to that limited extent, the appeal on ground (f) should succeed in part.

Ground (g)

27. The appeal on ground (g) is that the time to comply with the Notice is too short. At the time of my site visit, there appeared to be no particular use of the site and that it may have been that way for some time: Although it was an event day at the Stadium, there were no vehicles, part of the surface was overgrown, the access gates were locked and there were no advertisements or signage for a car park use. Instead, there were advertisements that the site was available to let for other uses.
28. All of the above suggests that the appellant would have no difficulty in complying with the Notice within a week. However, my viewing of the site was a snapshot in time and I do not have any detailed evidence about the current use of the site or any future bookings. I can appreciate that, if they exist, it might be difficult to cancel them within the short time specified and prospective users may suffer significant inconvenience from sudden, short-term disruption to their parking arrangements.
29. The appellant has suggested a range of alternative times ranging from 3 months to a year. I can appreciate that many bookings may be made several months in advance, but no detailed evidence has been provided as to the actual length of time into the future that bookings have been made. Given the current situation that I observed at the site, there is a risk that a compliance

period of even 3 months could result in the use, which appears to currently not be ongoing, re-starting. I shall, therefore, extend the compliance period, but only to 1 month, on the basis that this should allow sufficient time for any outstanding customers to be contacted and give a reasonable time for them to make alternative arrangements. Accordingly, and to that limited extent, the appeal on ground (g) succeeds.

Conclusion

30. For the reasons given, planning permission should not be granted for the matters alleged in the Notice, the appeal on ground (a) fails, and the Notice is upheld. However, the requirements go beyond that necessary to remedy the breach and the time to comply with them is too short. I shall, therefore, vary the requirements and time for compliance with them as set out in my Formal Decision. The appeals on ground (f) and (g) succeed in part to this limited extent.

Formal Decision

31. It is directed that the enforcement notice is varied by:

- In Schedule 4, Step 2: Delete “/land” and replace it with “associated with the unauthorised use”.
- In Schedule 4: Delete “Step 5 – Remove all other items associated with the unauthorised use from the premises”.
- In Schedule 5: Delete “1 week” and replace with “1 month”.

32. Subject to the variations, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Bale

INSPECTOR