



Appeal Decision

Inquiry Held on 4, 5 and 6 June 2024

Site visit made on 5 June 2024

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision Date: 11 July 2024

Appeal Ref: APP/T5150/C/23/3333281

39 St. Michaels Avenue, Wembley HA9 6SH

- 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 Mrs Marta Lazic against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/23/0229, was issued on 9 October 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises to residential and a business use involving the storing/hiring and use of business vehicles.
- The requirements of the notice are:
 - STEP 1 Cease the use of the premises as a business use involving the storing/hiring and use of business vehicles.
 - STEP 2 Demolish the marquee to the front of the premises.
 - STEP 3 Remove the hardstanding created to store vehicles to the front, side and rear of the premises.
 - STEP 4 Remove all items, materials, vehicles, and equipment associated with the unauthorised change of use from the premises.
 - STEP 5 Restore the premises back to its original condition before the unauthorised change of use took place, as shown in the attached "PHOTOGRAPH A".
- The period for compliance with the requirements is 3 months.
- The appeal is made 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. 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 of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

The Enforcement Notice

1. The parties agreed that the alleged breach of planning control should be described as a mixed use and that accordingly, step 1 of the requirements should be worded to refer to ceasing the mixed use. It was accepted by the parties that the notice ought to refer to the parking rather than storing of vehicles; also that the hardstanding area, the subject of step 3, should be identified as the area situated to the north of the dwelling. I am satisfied that the notice can be corrected accordingly without resulting in injustice to any of the parties.

2. It was also confirmed by the Council that it no longer objected to the development on waste storage grounds.

The Breach of Planning Control

3. The Council confirmed at the beginning of the Inquiry that its primary position is that the breach of planning control has arisen from the amalgamation of two distinct planning units to form a single planning unit in mixed use. However, if this is not accepted, in the alternative it argues that there has been a material change of use of a single planning unit to a mixed use comprising business and residential uses from a previous single residential use, where the level of any business use at that time ought to be regarded as *de minimis*¹. The Council expressly stated at the beginning of the Inquiry that it was not arguing that a breach of planning control had occurred through the intensification of the business use of the site.
4. The appellant was aggrieved that the Council's two planning unit argument was only revealed on Day 1 of the Inquiry. They had not therefore had the opportunity to consider or respond to this position in advance of the event. However, I am satisfied that through the course of the Inquiry the appellant has had the opportunity to respond to and challenge the Council's stance and to set out its case fully such that no injustice has occurred.

The Grounds of Appeal

5. Prior to the Inquiry, the appellant confirmed that the appeal on ground (c) was withdrawn.

The Oath

6. All evidence to the Inquiry was given on oath.

Applications for Costs

7. At the Inquiry, applications for costs were made by the appellant and the Council against each other. These applications are the subject of separate Decisions.

Background and Approach

8. The appellant and her husband have for many years run a business hiring out vehicles to the funeral industry, and to a lesser extent in connection with weddings. They have gradually built up and maintained a pool of vehicles including hearses, limousines and Rolls Royces. The following chronology is undisputed:
 - The business was started in the early 1980s and was operated from the appellant's previous residential address at No 41 St Michaels Avenue, the neighbouring property to the appeal site. Business related vehicles were parked at that property.
 - In 1998, the appellant began to rent the use of the garage and forecourt area at No 39 St Michaels Avenue, immediately to the south of the dwelling on that property. This was in order to accommodate the need

¹ The parking and cleaning of five business related vehicles in the garage and on the forecourt.

for additional space to park their growing fleet of business vehicles. At that time the No 39 dwelling was owned and occupied separately.

- In 2003, the appellant acquired the No 39 property in its entirety. At this point the dwelling was let to tenants, whilst the garage and forecourt continued to be used exclusively for the parking of vehicles in connection with the business being run from No 41.
- In March 2020, the appellant and her husband sold No 41 and moved into No 39. They continued to park vehicles there in connection with the business. One of the rooms at the property acts as a small office to administer the business. All transactions are online so that no customers, with the exception of the drivers of the funeral vehicles, visit the site.
- In June 2023, the appellant constructed a hardstanding area within the appeal site immediately to the north of the dwelling to accommodate the parking of more business related vehicles;
- In March 2024 the appellant removed a marquee that had been erected to help protect vehicles parked on the aforementioned forecourt.

The Planning Unit

9. There is no dispute that there has been a material change of use at No 39 St Michaels Avenue to a mixed residential and business use. What is in dispute is when the mixed use first occurred and what the lawful use of the planning unit is.
10. In order to identify when the material change of use occurred, it is important to understand how the planning unit at No 39 has evolved. It is settled case law that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes; the concept of physical and functional separation is key². The judgment identified three broad categories of distinction:
 - A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;
 - A single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes. Each area that has a different primary use ought to be considered as a separate planning unit.
11. The Council accepts that from 1998, because the business and residential use of No 39 took the form of separate occupations of that property it would not be possible to regard the parking of vehicles there for business purposes as being incidental to the residential use. There is no reason for me to take a contrary view. As set out in broad terms above, the Council's primary case is the dual

² *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

nature of the occupation, combined with the physical separation of the garage and forecourt areas from the remainder of the property and the functional separation of the business and residential uses means No 39 was comprised of two distinct planning units, in accordance with the third bullet point above.

12. I was able to observe the physical layout of the site during my visit. The garage and forecourt are at one end of the property and there is a change in ground level, albeit small, between the front garden and the forecourt, as demarcated by a short retaining wall. When the property was in separate occupations, whilst it may have been possible, it would not have been necessary, nor likely, for any regular encroachment onto the forecourt area in connection with the residential use.
13. It was also confirmed by the previous tenant of No 39³, that their own personal use of the garage for domestic purposes was prohibited. It therefore seems to me, as a matter of fact and degree, and having regard to the evidence, that the garage and forecourt should be regarded as having been physically and functionally separate from the remainder of the property. Accordingly, I concur with the Council that from 1998, No 39 would have comprised two planning units. In March 2020, when the appellant moved into No 39 this resulted in a single unit of occupation and amalgamation into a single planning unit in mixed use (the scenario described in the second bullet point above).
14. It seems to me that the wholesale transfer of the business from No 41 to No 39 would likely have resulted in some changes to comings and goings and the level and type of activity at No 39. It is likely that changes would have been noticeable in terms of people movements between the house and parking area, also in terms of drivers attending No 39, as opposed to No 41, in connection with the collection and return of business vehicles. This is not to say that such changes would have been harmful, only that they would have been material as a result of being noticeable. I consider that such changes were the trigger for the material change of use of No 39 to the alleged mixed use.

The appeal on ground (d)

15. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. In order to succeed on this ground, in accordance with Section 171B(3) of the Act, it would be necessary for the appellant to show, on the balance of probability, that the alleged change of use of the site had occurred at least ten years before the notice was issued, that is by 9 October 2013, and had continued over a ten-year period. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity. If this cannot be shown then the use would not be immune from enforcement action.
16. However, for the above reasons I consider that the alleged material change of use occurred in March 2020. The alleged mixed use is not therefore immune from enforcement action and accordingly the ground (d) appeal fails.

³ Who occupied No 39 between 2012 and 2019.

The appeal on ground (a)

17. The appeal on ground (a) is that planning permission ought to be granted. The main issues are:
- a. The effect of the development on the character and appearance of the area;
 - b. The effect of the development on the living conditions of neighbouring occupiers having regard to privacy, outlook and noise and disturbance (including comings and goings);
 - c. The question of access and parking.

Character and Appearance

18. The appeal site is situated within a relatively quiet residential suburb of Wembley. St Michaels Avenue is a wide and linear road with substantial grass verges and street trees and generous separation between the front elevation of dwellings on opposite sides of the street. There is unrestricted on-street car parking space available on both sides of the road, which at the time of my visit appeared to be well utilised. No 39 is an early 20th century, 2 storey detached house. There is a double garage and forecourt on the south side of the dwelling and hardstanding area on the north side.
19. The appellant's business includes the parking of eleven funeral related vehicles on the property, up to six on a hardstanding area immediately to the north of the dwelling and up to five within the garage and forecourt area immediately to the south. Being vehicles that are utilised within funeral processions they are invariably black in colour, and include hearses and limousines, which inevitably are longer and somewhat different in design when compared with typical domestic vehicles.
20. Notwithstanding this, vehicles parked within the garage and on the hardstanding are concealed, or substantially screened, from view. In any event the vehicles, despite their size and design, are lacking in bulk and signage and are more akin to domestic, rather than commercial vehicles⁴. To my mind, the vehicles do not therefore appear out of place in a residential environment and do not, from their inherent appearance, give the impression of a business being run from the property, even if the vehicles are parked on St Michaels Avenue from time to time. It is also of significance that the Council does not object to the parking of up to five such vehicles in the garage and on the forecourt in any event, because it deems that this would be lawful.
21. Whilst I understand the vehicles would regularly need to be cleaned and maintained to a high standard, in line with customer expectations, the hand washing and vacuum cleaning of vehicles are activities that are commonly found to occur in the residential environment. Furthermore there is no suggestion that any mechanical servicing of or repairs to vehicles would take place at the appeal site.
22. It was also apparent from my visit that in making provision to accommodate the parking of vehicles within the property, grassed and landscaped areas to

⁴ This contrasts with the sign-written 'Luton' body type vans that were the subject of the appeal decision referred to by the Council (Ref: APP/T5150/C/05/2001768).

the front and rear of the appeal site have been retained. The property itself therefore maintains a domestic appearance, and not one that is dominated by hardstandings around the dwelling.

23. The appellant previously erected a large marquee / tent over the forecourt area to the south of the dwelling. I am in no doubt, from the photographs provided, that this structure was visually obtrusive and out of character with its surroundings. However, it has since been removed and the appellant confirms they do not propose to re-erect the structure.
24. Drawing the above considerations together I conclude that the alleged mixed use does not result in harm to the character and appearance of the area. Accordingly, I do not find conflict with Policies DMP1 of the Brent Local Plan 2022 (LP) and with the Council's Design Guide SPD 1 2018 and Residential Extensions and Alterations SPD 2 2018 insofar as they seek to protect the character and appearance of the area.

Living Conditions

25. In terms of business related comings and goings, there is the potential for 11 funeral related vehicles to leave and return to the property each day. However, in reality, the appellant's evidence, supported by diary entries, is that more often the demand is for fewer vehicles. I am mindful the appellant's noise consultant produced evidence to the effect that opening and closing of car doors, car engines and the cleaning of vehicles by hand, associated with the business, would not result in noise levels that would be harmful to amenity. This would remain the case even if all 11 vehicles were utilised on a specific day. This evidence was not challenged by the Council.
26. I also acknowledge that it would be possible to impose a planning condition to control the hours of operation of the business, and that the operation involves 'luxury vehicles' which would not be expected to have noisy engines. Furthermore, the appeal site involves a detached property, with generally good standards of separation from neighbours. Whilst the hardstanding and parked vehicles, to the north of the dwelling are close to the front elevation windows of No 41, a substantial boundary wall separates the two sites.
27. It is undisputed that a number of drivers associated with the business attend the appeal property in order to collect and drop off vehicles. Whilst such movements and interactions are likely to be noticeable, I agree with the appellant it is unlikely that drivers would all arrive at the property at the same time. I am not persuaded that such movements result in harmful levels of disturbance.
28. I have not been provided with any evidence to persuade me that the alleged mixed use results in harm, whether actual or perceived, to the privacy of, or outlook from, nearby residential properties. Notably, parked vehicles to the north of the dwelling are substantially concealed from view by boundary enclosures and garden trees, and to the south of the dwelling by the garage. The parked business vehicles do not dominate outlook from the nearest residential properties. Furthermore any visibility of the forecourt area, or of vehicles parked on the highway, would not be of patently commercial vehicles at odds with the residential character of the area.

29. I acknowledge that activity and movement could potentially in itself lead to disturbance, particularly where such activity is inconsiderate and disrespectful of other residents in the immediate neighbourhood. However, I have given careful consideration to the representations and experiences of the appellant's business associates and residents that live nearby. I was left with the clear impression that this is a business that has generally been run with consideration for those living nearby and which has a low-key impact. I conclude that the circumstances of this case do not give rise to harm in this regard. I am also mindful it would be possible to impose a personal planning permission condition to avert a permanent business use at the property.
30. I conclude that the development does not result in harm to the living conditions of nearby residents, having particular regard to noise and disturbance, privacy and outlook. It therefore conforms with Policy DMP1 of the LP and with SPD 2, as referred to above, insofar as they seek to protect such interests.

Access and Parking

31. The Council states that the development, involving the provision of 11 car parking spaces, would be in conflict with maximum residential parking standards, as set out within Policy T6.1 of the London Plan 2021. However, what is proposed is a mixed residential and business use which is not specifically encompassed by the standards referred to. Furthermore, the parking of eleven vehicles is associated with the inherent nature of the business, hiring out those vehicles, rather than with the servicing of the business. In this context, it is therefore somewhat misleading to place reliance on parking policy standards. Rather, the individual circumstances of the case are key to considering the parking impact.
32. The appellant's transport consultant conducted a survey of on-street parking in the vicinity of the appeal site, including at times when demand would be expected to be at its highest overnight. This study concluded that there was sufficient parking space available to accommodate the business without it causing parking stress within the locality. The study took into account the possibility that several drivers associated with the business would seek to park their own private vehicles close to the appeal premises. The consultant's evidence was unchallenged by the Council and I have no reason to take a contrary view.
33. I conclude the development does not result in harm due to parking stress and unavailable spaces or poor standards of access. Neither is there evidence that residents would be inconvenienced through needing to park further away from their homes. Accordingly, I do not find conflict with Policy DMP1 of the LP, with the Council's Supplementary Planning Document 1 (Design Guide) and 2 (Residential Extensions and Alterations) or with the National Planning Policy Framework in this regard. The parties agreed that Policy BT3 of the LP which is specifically concerned with freight and servicing matters was not relevant to this case.

Conditions

34. A list of suggested conditions, in the event that I decide to allow the appeal, was discussed at the Inquiry. Restrictions on hours of operation of the business, the playing of amplified music, the numbers of vehicles stored on the

premises and the servicing and repair of commercial vehicles are needed in order to protect the living conditions of nearby residents.

35. A condition preventing the erection of temporary structures, unless otherwise agreed by the Council, is required in the interests of the character and appearance of the area. The permission is personal to the Lazic family to enable the Council to retain adequate control over the future use of the appeal site.
36. I have no reason to conclude that existing waste storage arrangements at the appeal premises are inadequate. A condition is not therefore required in this regard.

Conclusion

37. For the reasons given above, I conclude the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice, as corrected. The appeal on grounds (f) and (g) do not fall to be considered.

Formal Decision

38. It is directed that the enforcement notice is corrected by:

Deleting the description of the alleged breach of planning control in Schedule 2 in its entirety and substituting the following wording instead:

"Without planning permission, the material change of use of the premises to a mixed use comprising residential and business use involving the parking / hiring and use of business vehicles ("the unauthorised change of use"); and

Deleting the wording of Step 1 and Step 3 in Schedule 4 in its entirety and substituting the following wording instead:

"STEP 1 Cease the mixed use of the premises as a residential and business use involving the parking / hiring and use of business vehicles."

"STEP 3 Remove the hardstanding created to park vehicles to the north of the dwelling."

39. Subject to the corrections the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the premises to a mixed use comprising residential and business use involving the parking / hiring and use of business vehicles, at 39 St. Michaels Avenue, Wembley HA9 6SH as shown on the plan attached to the notice, and subject to the conditions set out in the schedule below.

R Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) There shall be no vehicle movements associated with the business use, arriving at or departing the premises, outside the hours of 7am to 11pm each day.
- 2) No amplified sound (e.g. music, radio stations) shall be played from the business vehicles at any time whilst they are on the premises.
- 3) No servicing or repairing of commercial business vehicles shall take place on the premises.
- 4) This permission shall be personal to Mr Vladimir (Senior) Lazic, Mr Vladimir (Junior) Lazic and Mrs Marta Lazic for their use of the premises/land for hiring out of funeral or wedding related vehicles and shall not enure for the benefit of the land.
- 5) No temporary structures, such as a marquee, shall be erected at the appeal site for business purposes without the express written permission of the LPA.
- 6) No more than 11 vehicles shall be on the premises at any one time.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Ms C Colquhoun - Barrister

She called:

Marta Lazic	Appellant
Vladimir Lazic (Senior)	Appellant's husband
Vladimir Lazic (Junior)	Appellant's son
Father Dragan Lazic	Business Associate
Amjid Khan	Local resident
Paul Farrell	Business Associate
Daniel Pender	Local resident
Jozsef Bertok	Former resident of appeal site
Fiona Jones	Planning consultant
Nick Bond	Transport consultant
Andy Dodd	Noise consultant

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks

He called:

Anna Mascheroni	Planning Enforcement Officer
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INTERESTED PERSONS:

Stephen Hazaman	Local resident
Lidija Luzajic	Local resident
Adrian Saville	Business Associate
Leroy Sauerwine	Local resident

Silvija Jokic	Local resident
Artur Galla	Business Associate
Mrs Dhanjal	Local resident

Documents submitted at the Inquiry:

1. Opening submissions of the appellant and the Council.
2. Letters of support from various interested parties and local residents.
3. Funeral and wedding diary extract entries.
4. Statement of Common Ground.
5. Closing submissions from the Council and appellant.

Documents submitted following the Inquiry:

1. Costs submissions from the appellant and the Council.