
Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 24 April 2025

Appeal Ref: APP/G3110/X/24/3350684

City of Oxford College, Oxpens Road, Oxford

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Carl Simpson of Activate Learning against the decision of Oxford City Council.
 - The application Ref 23/01744/CEU, dated 31 July 2023, was refused by notice dated 5 March 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of the identified car parking spaces as a paid for, part time public car park at the weekends and out of term time only.
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Decision: the appeal is dismissed

Procedural matters

1. I have taken the description of the use for which a certificate of lawful use or development is sought from the application form. This is because the description there more accurately describes the use, including the limitations as to when the use operates.
2. The land to which the LDC application is shown on the Site Location Plan submitted with the application (Drawing ADP-00-00-DR-A-0900 Revision A-C 3). It covers the whole of the college campus, but specifically excludes the buildings known as the Ash Building and the Brent Building, as well as the land immediately surrounding those buildings.
3. I am satisfied that the appeal can be determined on the papers that are before me, without a site visit. The issues involved relate solely to whether the proposed use would have been lawful on the date the application for the LDC was made, based on the consideration of documentary evidence and judicial authority. Accordingly, I consider that in this case there would be no benefit to be gained from undertaking a site visit.

Reasons

4. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the

application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development would have been lawful on the date on which the application was made.

5. The background to this appeal is that in April 1999 planning permission (Council Ref:99/00240/NF) was granted for:

"Change of use from Educational to Health & Fitness Club for college & general public use. New entrance & associated canopy".

6. I shall refer to this as the '1999 permission'. That permission was subject to conditions, Condition of 5 of which states:

"The public using or visiting the Health and Fitness Club shall not use the College car park between the hours of 7.00am and 7.00pm.

7. The reason for imposing that condition was:

"To ensure that the car park is always available for college use".

8. That permission was implemented, and there is a wellbeing centre in use today (known as the Oxford Lifestyle Centre), accommodated in the Dorn Building. Condition 5 of the 1999 permission has therefore taken effect.

9. Condition 5 of the 1999 permission purports to restrict use the College car park to those *members of the public using or visiting the Health and Fitness Club* between the hours of 7.00am and 7.00pm (emphasis added). On any plain reading of that condition, it can only relate to that specific group of people (i.e those members of the public using or visiting the Health and Fitness Club). It does not relate to the wider general public which, on my reading, are therefore not precluded from using the College car park at any time by that condition.

10. This potentially leads to the bizarre situation whereby the use of the car park by members of the public using or visiting the Health and Fitness Club is restricted to specific hours by Condition 5 of the 1999 permission, whereas there is no such restriction on the use of the car park by the wider public. Nonetheless, that is the natural and ordinary meaning of those words.

11. In March 2000, planning permission (Council Ref: 19/02824/FUL) was granted for:

*Erection of 3no. single storey extension to the Ash and Brent buildings.
Demolition of existing single storey extension and partial covered canopy.
Enlarged openings at front elevation at ground floor level.*

12. I shall refer to this as the '2000 permission'. That permission was subject to conditions, including Condition No.8 which stated:

The car parking hereby approved shall be exclusively for the use of students and staff of the City of Oxford College or any other college operating on the application site.

13. The reason for imposing that condition was:

"To ensure the development complies with the requirements of Policies TR11 and TR12 of the Oxford Local Plan 2001-2016".

14. I understand that the 2000 permission has been implemented, such that Condition 8 of that permission has taken effect.

15. The courts take a purposive as well as pragmatic approach to the interpretation of conditions. In *Trump International Golf Club Scotland Ltd v the Scottish Ministers* [2015] UKSC 74, Lord Carnwath held that a planning permission is a public document which may be relied on by parties unrelated to those originally involved. The Supreme Court held that the correct approach is to consider what the reasonable reader would understand the words to mean in the context of the overall purpose of the planning permission and with common sense.

16. More recently, the Supreme Court has held that:

'Whatever the legal character of the document in question, the starting-point – and usually the end-point – is to find "the natural and ordinary meaning" of the words there used, viewed in their particular context (statutory or otherwise) and in the light of common sense.'

It is therefore helpful to break down the wording of Condition 8 to its component parts to assist in the interpretation of Condition 8 imposed on the 2000 permission.

17. The words *'The car parking hereby approved'* can only sensibly be read to relate to the car parking approved by the planning permission to which it relates: i.e 19/02824/FUL (emphasis added). That is the natural and ordinary meaning of the words 'hereby approved'. This was for a total of six spaces, in two groups of three to the south of the Ash and Brent buildings.

18. The natural and ordinary meaning of the words *'exclusively for the use of students and staff of the City of Oxford College or any other college operating on the application site'* is also crystal clear (emphasis added). It is immediately apparent from those words the six parking spaces are only to be used by a certain category of people, and not the general public.

19. However, the words 'on the application site' must be read with care. Those words relate to the words that immediately precede them, namely *any other college operating*'. Those words must also be given their natural and ordinary meaning. Those words do not relate to the 'application site' as defined on the plan submitted with the planning application as the land edged in red, but rather the colleges operating on the application site.

20. Nonetheless, it must follow that on a natural and ordinary reading the words 'hereby approved' at the beginning of Condition 8 can only apply to the land within the area edged in red on the application plan. It does not relate to the area edged in blue on that same plan. The area edged in blue on that plan defines the land owned by the applicant, not the 'application site'.

21. In this respect, the applicant for the 2000 permission did muddy the waters somewhat by submitting a plan showing the car parking across the college campus as a whole. This plan is listed in the Council's formal Decision Notice

as an application plan. The applicant muddled the waters further by including information with the application relating to car parking spaces across the whole campus.

22. However, in *Trump v Scottish Ministers* it was held that, depending on the circumstances of the case, the court may also look at other documents connected with the application for the consent, or referred to in the consent, and find that other documents may be relevant if they are incorporated into the consent by reference, or there is an ambiguity in the consent, which can be resolved, for example, by considering the application for consent (emphasis added).
23. Pursuant to the judgement in *Trump International v Scottish Ministers*, it is necessary to look at the context of the overall purpose of the planning permission. This means considering the planning permission as a whole, including the Decision Notice, the conditions imposed on the permission and all the application plans (not just the plan for the campus as a whole).
24. It is relevant that Condition 8 does not cite the application drawing number showing car parking across the college as a whole. Consequently, there is an element of ambiguity inherent in the wording of Condition 8, such that nothing in the wording of Condition 8 would directly alert the reasonable reader that the condition was intended to relate to the college as a whole, and not just the application site. Nonetheless, when read as a whole, the reasonable reader would understand from the 2000 permission that Condition 8 only relates to the application site itself, as edged in red on the application plan. That is the obvious and only natural interpretation of that condition when read as part of the planning permission as a whole.
25. Looked at in the round, I do not find anything unlawful about Condition 8. It accords with the six policy tests set out in the Planning Practice Guidance, including enforceability. In that context, the Council could readily discover if the six car parking spaces on the application site were being used otherwise than by students and staff of the City of Oxford College or any other college operating on the application site.
26. But the salient point is that on a natural and ordinary meaning Condition 8 can only relate to those six parking spaces to the south of the Ash and Brent buildings. The other parking spaces on the college campus as a whole are not caught by Condition 5 of the 1999 permission or Condition 8 of the 2000 permission.
27. Section 191(2) of the 1990 Act states that:

For the purposes of this Act uses and operations are lawful at any time if:

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force

28. Sub-section (b) is not relevant this case, but (a) above must be read in conjunction with section 171A of the 1990 Act. This states that

For the purposes of this Act (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.

29. The time limits for taking enforcement action are set out in section 171B of the 1990 Act, subject to the changes made by The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). I have found that Condition 5 of the 1999 permission does not relate to the general public, and that Condition 8 of the 2000 permission only relates to the six parking spaces to the south of the Ash and Brent buildings, which are excluded from the LDC application. Consequently, the only time period that is potentially relevant here is that at section 171A(a), specifically the carrying out development without the required planning permission.
30. The LDC application was submitted in July 2023. If development for the purposes of section 55(1) of the 1990 Act at all, the use for which the LDC is sought would constitute a material change of use of the land. At that time, a material change of use fell within section 171B(3) of the 1990 Act relating to 'any other breach of planning control', in respect of which the time limit for taking enforcement action was 10 years.
31. Condition 5 of the 1999 permission does not relate to the general public, which are therefore not precluded from using the College car park at any time by that condition. Nonetheless, that does not automatically mean that the use sought by the LDC was lawful on the date the application was made. The question remains as to whether the use of the identified car parking spaces as a paid for, part time public car park at the weekends and out of term time constitutes a material change of use that requires planning permission.
32. The appellants maintains that the 1999 permission established the principle of public parking within the campus. The 1999 permission was for the change of use from Educational to Health & Fitness Club for college & general public use, but only for one building on the campus (the Dorn building). Furthermore, Condition 5 of that permission placed restrictions on the car parking for only a particularly group of people. I am not convinced that this translates to establishing the principle of public parking across the campus as whole. On the evidence before me, it does appear that the car parking associated with the other buildings on the campus was intended for and used primarily by students and staff employed by the college albeit not controlled for that purpose through conditions. As such, it is more likely than not that the car parking is ancillary to the primary use of the college as an educational establishment.
33. I do not have sufficient evidence before me as to factors such as the number of vehicular movements involved, hours of operation, the duration of stay and the turnover of car parking spaces for the college as a whole as an education establishment. Similarly, I do not have that information in relation to the use of the identified car parking spaces as a paid for, part time public car park at the weekends and out of term time. Consequently, I am not in a position to make an informed judgment as to whether, as a matter of fact and degree, the latter has resulted in some significant difference in the character of the

activities from what has gone on previously. For that reason, and for the avoidance of doubt, I express no opinion one whatsoever as to whether the use sought by the LDC constitutes a material change in the use of the land. That is a matter entirely for the local planning authority in the first instance.

34. Nevertheless, for present purposes I cannot discount the possibility that the use sought by the LDC does constitute a material change in the use of the land. It is settled case law that a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. In this context, it is also settled case law that continuity relates to the established pattern of the use: for example, if the use only took place on certain days of the week but that pattern of use was repeated on a continuous basis.
35. Consequently, for the use sought by the LDC to be found lawful on the date the LDC application was made, it is necessary for the appellant to demonstrate through evidence that, on the balance of probability, the use of the identified car parking spaces as a *paid for*, part time *public* car park at the *weekends* and *out of term time* has been carried on continuously and without interruption throughout the relevant ten-year period. In this respect, the burden falls squarely upon the appellant to show that the use sought by the LDC would have been lawful on the date the application was made.
36. The appellant has submitted copious evidence in relation to the use of car parking spaces at the college, including Statutory Declarations, invoices, extracts from the local press and postings from social media. I have read and understood all that evidence, but do not propose to rehearse it in detail here.
37. However, it is sufficient to say that much of that evidence is undated (for example, the signage plans) and that evidence which is dated is concentrated on the early part of the relevant ten-year period. As such, the evidence does not cover the whole of the relevant ten-year period. Furthermore, I have been provided with no evidence of the actual use of the car parking at the college by the public at the weekends or out of term time: for example, I have not been provided with copies of timed/dated parking tickets, parking surveys or dated photographs of vehicles parked in those spaces.
38. Neither have I been provided with sufficient evidence that the parking was paid for: again, through car parking tickets with the parking charge indicated on them, a schedule of parking charges displayed on the site or accounts maintained by the college showing the income generated through car parking on the site. The only evidence provided in that respect are two articles that appeared in the Oxford Mail in January and May 2012 respectively, in which the parking fee is indicated as being £5 per day and indicating the revenue that accrued to the college in the first few months of operation. This is good evidence that the use was taking place in early 2012, but is of no assistance in showing that the use continued without interruption thereafter.
39. Absent that evidence, there is nothing to show that the parking spaces at the college have actually been used by the public in the terms sought by the LDC. Consequently, I am not satisfied that, on the balance of probability, the evidence before me collectively shows that the use of the identified car parking spaces as a paid for, part time public car park at the weekends and out of term time only at City of Oxford College has been ongoing continuously and without interruption throughout the relevant ten-year period, such that the use for

which the LDC is sought was lawful on the date that the application was made. In that respect, the appellant has not discharged the burden of proof that falls upon him.

Conclusion

40. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the identified car parking spaces as a paid for, part time public car park at the weekends and out of term time only at City of Oxford College, Oxpens Road, Oxford is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Paul Freer
INSPECTOR