



Appeal Decisions

Inquiry Held on 24 July 2018

Site visit made on 24 July 2018

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2018

Appeal 1 Ref: APP/T5150/C/17/3170810

Land at 1-5 Cannon Trading Estate, Suites 1-8 Latif House, Units 1-4 rear of Latif House, First Way, Wembley HA9 0JD

- 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 against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/16/0748, was issued on 2 March 2017.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use from office/industrial to a mixed use as office/industrial and car parking (i.e. car parking that is not ancillary to the office/industrial use).
- The requirements of the notice are:
 1. Permanently cease the use of the land/premises as a public car park.
 2. Do not use the premises for car parking except for parking that is ancillary to the lawful use of the land/premises.
 3. Remove all vehicles from the premises, except those which are associated with the office/industrial use.
 4. Remove all advertisements and signs associated with the parking use.
 5. Remove all other items associated with its use as a car park.
- The period for compliance with the requirements is 1 day.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations, in the terms set out below in the Formal Decision.

Appeal 2 Ref: APP/T5150/X/17/3179530

Land at Latif House, First Way, Wembley HA9 0JD

- 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 Ali Latif against the decision of the Council of the London Borough of Brent.
- The application Ref 17/1137, dated 3 March 2017, was refused by notice dated 5 June 2017.
- 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 car parking not ancillary to office/industrial use (i.e. mixed use class).

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. At the inquiry I confirmed with the appellant and the Council that there was no distinction in the evidence provided to support their respective cases on the two appeals. In other words the evidence applied to and was common to Appeals 1 and 2. Therefore to avoid unnecessary repetition I have not restated all the analysis undertaken in the reasoning on Appeal 1 when considering Appeal 2.
2. All oral evidence was given under solemn affirmation.

APPEAL 1

Enforcement notice

3. The enforcement notice is directed at a material change of use of land. The Land as defined on the plan attached to the notice in broad terms encompasses (a) Latif House, the car park to the front and the units to the rear, and (b) a group of buildings that front onto parking and circulation areas, known as units 1-5 Cannon Trading Estate. It appeared from information supplied in responses to planning contravention notices (PCNs) in January 2017, submitted evidence and from observations on site that the units were in a range of uses, including warehousing and vehicle repairs. I requested comments from the main parties on the relevant planning unit(s), the extent of the land covered by the notice and the components of the mixed use as described.
4. In short, the Council was satisfied that the notice generally described the mixed office/industrial uses found in the area and clearly identified the additional non ancillary car park use which was being attacked by the notice. The non-ancillary car parking had occurred to the front of units 1-5 and was not confined to the Latif House car park. The owners/occupiers of all the units were served with a copy of the notice and only Mr Latif had decided to appeal. Following the appeal site visit the Council accepted that the notice should be corrected to include 'warehousing' as one of the components of the mixed use.
5. Mr Latif's comments were linked to the area of land identified in his application for an LDC, which I also will address below under Appeal 2. In terms of the notice, he considered the planning unit was limited to the car park area adjacent to Latif House as shown on his LDC plan and hence there was no mixed use. Wembley Parking Ltd (WPL) paid a fee to use the land for parking, indicating the parking was not an ancillary use. In the alternative the blocks of commercial car parking spaces are planning units as they are physically distinct in their use and clearly identified on the ground by labelling and by attendants. The Cannon Trading Estate units were under separate ownership.
6. 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.
7. In this instance the circumstances justify defining a larger area, as shown on the notice plan. Mr Latif's evidence indicated that functional links exist between

the building Latif House and the car parking area in terms of management and the availability of spaces for contract/event parking and parking for the occupiers of Latif House and units at the rear. It appeared the areas were managed and supervised as a whole. Spaces made available by Mr Latif for contract/event parking include spaces outside the fenced off area in front of Latif House. They extend to spaces along the common access way that serves both the Cannon Trading Estate units and the units to the rear of Latif House. The circulation area and parking spaces within the estate are not well defined as distinct entities on the ground. The Council reported that event car parking was observed taking place at Cannon Trading Estate on 26 February 2017. Responses to PCNs issued in January 2017 indicated that some estate parking was used for event parking. It appears that the tenants of the Estate units have changed over a limited time period and for example, units 2 and 3 are now vacant. Therefore the planning unit for the purposes of this appeal corresponds to the area of land outlined in black on the notice plan. This approach does not prevent consideration of circumstances specific to one owner/occupier of land, namely the appellant.

8. As to the description of the use, inclusion of 'warehousing' would more accurately reflect the range of uses found within the site area. The alleged breach focusing on the introduction of non ancillary car parking and the purpose of the notice to secure the end of that type of car parking would not be affected. Therefore this correction is able to be made without causing injustice to either the appellant or the Council. No other matters were raised by the main parties. Consequently on correction the alleged breach of planning control becomes "Without planning permission the material change of use of the land from office/industrial/warehousing to a mixed use as office/industrial/warehousing and car parking (i.e. parking that is not ancillary to the office/industrial/warehousing use)."

Grounds of appeal

9. The appellant indicated prior to the inquiry that he wished to introduce appeals on ground (b) and ground (g). The points raised in relation to ground (b) – that the matters set out in the alleged breach of planning control have not occurred – have been dealt with in the paragraphs above regarding the description of the alleged breach. The Council was able to make submissions on the length of the compliance period at the inquiry and so consideration of a ground (g) appeal causes no injustice.

Ground (d): *that at the date when the notice was issued no enforcement action could be taken in respect of the matters stated in the alleged breach of planning control*

10. The main issue is whether on the balance of probability the material change of use of the land took place before 2 March 2007 and whether the mixed use including car parking was continuous for a period of ten years thereafter.
11. The date of 2 March 2007 reflects the time period for taking enforcement action against a material change of use not involving a change to use as a single dwellinghouse. Section 171B(3) of the 1990 Act states "In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach." One of the ways a use can become lawful is if the time for enforcement action

has expired (s191(2)(a)). The onus is on the appellant to prove his case on the balance of probability.

12. A meaning of a material change of use is not stated in the 1990 Act but generally speaking as a matter of fact and degree there has to be some significant difference in the character of the activities from what has gone on previously. Therefore in this appeal it is not sufficient to show that 'commercial' car parking has been taking place on the land for over ten years. A key factor is to identify when a use for car parking as part of a mixed use brought a permanent change to the character of the use of the land. A relevant consideration is off-site effects and hence a wider perspective is required than just a focus on site specific facts. The planning unit is the area of land against which to assess the materiality of change and I have concluded the planning unit is appropriately identified on the notice plan.
13. The unauthorised use must have continued throughout a ten year period before it can achieve immunity from enforcement action and thereby lawfulness. A minor, insignificant interruption is unlikely to be fatal. A relevant test is to ask whether an interruption on the ground resulted in a cessation of the use such that no enforcement action could be taken against it by the local planning authority during that period.
14. The appellant was concerned to produce sufficient evidence to show continuity in the non ancillary parking use. At the inquiry the Council confirmed that the evidence for the period from around May 2007, more particularly the volumes of listings and confirmations of bookings between 13 May 2007 and 17 September 2017 and booking payment emails for the earlier part of this period, were sufficient to demonstrate a continuity of the new mixed use¹. Attention was directed primarily to the appellant's evidence pre-dating that period. The Council was of the view that a material change of use took place in May 2007, linked to the opening of the new Wembley Stadium and the increase in organised event parking, with all its planning consequences on and off site.
15. Mr Latif's case was that he was engaged in the car parking business at Latif House for many years prior to 2007. At the inquiry he dated the material change of use to 2004, when he started a new business Latif Rugs Ltd and became directly involved in the commercial car parking business. At that time he took a lease on 60/65 car parking spaces and began providing commercial car parking to local businesses and for Wembley Arena events. In 2005 a website wembleyguide.com was set up to provide online bookings for the parking business and a guide to Wembley Arena. In March 2007 he established another business Wembley Parking Ltd. (WPL) in partnership with his brother to provide an innovative way to book and pay for parking for both event and non-event dates. The opening of the Stadium in May 2007 enabled further development of the business.

Assessment of evidence

16. The appellant acknowledged that the more comprehensive documentation supporting his case was from early 2007. The earlier evidence was produced to show the activity had long been a feature of the site.

¹ See Appendices 4 and 5 in the appellant's documents (NB. The appendices supplied to me were not paginated)

17. Three broad periods are adopted for the basis of the assessment, although there is inevitably some overlap of the evidence. Not every item of evidence will be referred to as some documents are repetitive or confirm matters that are not contentious.
18. No statement of common ground was provided. However, it appears to be agreed as a matter of fact that the last match to be played at Wembley Stadium was on 7 October 2000 and that the demolition of the Stadium officially began in September 2002. The new Stadium was completed and handed over to the Football Association on 9 March 2007 and officially opened on 19 May 2007.

Period 1993 up to 2004

19. The appellant's family purchased Latif House in 1989. Mr Latif dated his involvement with the site to 1993, since when the car park was used for Stadium and Arena events. Latif International Ltd was established in 1997 and a lease of the premises and car park was taken up.
20. A statement from Mr John Tabor (now deceased) was submitted to confirm that parking services were provided on the land back to 1993 for neighbours, people attending events at Wembley Arena and Stadium as well as the Sunday market. However, the statement is undated, unsigned and lacks any detail on number of spaces available, level and frequency of use and such like. It has little weight.
21. Bank statements dated 1 September 1997, 1 December 1997 and 23 June 1999 have sums credited with the reference Wembley. Although there are handwritten annotations indicating cash from 'events' and 'rolling stones', they are of little significance without further detail.
22. A letter headed Recover Ltd dated 17 November 1999 appeared to give consent for the granting of a lease for a small area of the front yard at Latif house². In cross examination Mr Latif could not remember what happened thereafter.
23. A quotation was submitted to Latif International Ltd in March 2002 for resurfacing a car park and marking out approximately 40 bays. Mr Latif accepted that he did not know whether or not the work was carried out and that being so the quotation has little relevance.
24. Mr Arrulapan, who is employed by Euro Car Parts Ltd, in his written statement referred to his colleague procuring the rental of a unit at the rear of Latif House in 2002, which was occupied until 2005. Even when taken with his oral evidence there is very little information to assist in understanding the use of the car park over the early period. The evidence of Mr Lo, whose company has occupied Unit 2 at Latif House, was not consistent over the date he first knew the site (2002, 2003 or 2005) or the parking activity there. Despite the content of his written statement, in his oral evidence he stated that he had never seen a car parking business at Latif House.
25. The probability is that over this period there was a limited amount of non ancillary parking but the evidence is imprecise and there is nothing sufficient to show a material change of use took place.

² The letter was signed by Mr Latif as Director with the address Unit 1 Latif House

2004 up to around March 2007

26. I have no reason to doubt that Latif Rugs was Ltd was established in 2004. A tenancy agreement to allow Latif Rugs Ltd to let 60 car parking spaces at Latif House was dated 1 November 2004 for a term of two years³. According to Mr Latif the remaining 30 or so spaces were available for tenants of and casual visitors to Latif House and adjacent rear units. There is also documentary confirmation that a website wembleyguide.com was registered on 25 December 2005⁴. According to Mr Latif this website was not renewed after 2012 and was taken over by an unrelated third party due to its value in registered traffic.
27. Mr Latif made enquiries about car park signage as shown by the 'dsigns' email dated 9 December 2002. Subsequent contact with the company in September 2005 indicates that signs (directional arrows and no parking) were supplied in 2002/2003. Contact also was made with another company Union signs in September 2005. Mr Latif was unable to definitely recall whether signs for the car park were supplied and erected as a result. Even if they were, improvements to signage to secure better operation of the car park could apply equally to use for ancillary parking.
28. The correspondence in early 2006 with David Menzies Associates, who manage Cannon Trading Estate, illustrates no more than a matter to do with rights of way and a common concern about fly tipping and illegal parking. Subsequent correspondence in April 2006 shows that Mr Latif investigated a scheme with a company to control illegal parking. The main car park was described to be for customer and pay and display parking, where the gates were locked after 1900 hours. The description and evening closure of the car park does not support its use for event parking or other forms of non ancillary parking.
29. Mr Latif dated the closure of Wembley Arena for refurbishment to 2 to 3 months between late 2004 until February 2005. The Council's witness Mr Rolt recalled that the Arena was closed for a considerably longer period as the works were extensive and involved reversal of the entrance. No independent source of information was produced to confirm the period of closure but given the scale of the refurbishment work the probability is that the closure was longer than a three month period.
30. The list of event dates when Latif House provided parking starts on 22 January 2004 and lists the performer/event and date, but not location, for 2005, 2006 and through to April 2017. The number of events per month shows a lot of variation and the total number of events in 2005 at 18 was much lower than other years, possibly due to the closure of the Arena. However, the usefulness of the list is limited by the fact that there is no correlation with the number of parking spaces provided. It may be that only 1 or 2 spaces per event were provided, as indicated below.
31. Numbers of bookings for car parking spaces for the period April 2006 to April 2007⁵ were reviewed with Mr Latif during cross examination. The number of bookings per month ranged from a single booking (in April, June 2006, February 2007) to 4 bookings in March 2007, 7 bookings in April 2007 (all sent 2 April) and 15 bookings in November 2006 (all sent on 10 November). The

³ Appendix 8 in the appellant's documents

⁴ Appendices 4 and 14 in the appellant's documents

⁵ Appendix 5 in the appellant's documents protx confirmation emails sent to sales@wembleyguide.com

amount for each booking generally is for £5 or £9.90, £9.95. This information suggests that these bookings were probably for an event but were very low in number and intermittent over the year.

32. In this context reference was made by Mr Latif to the constraints on the website technology available at the time and payments being in cash. The information on bookings was read together with bank deposits of sums of £5,000 and £72. However, apart from handwritten annotations of 'parking' and 'CS Parking sales', there is nothing to directly relate the payments to parking at Latif House. The bank date stamp in respect of the sum of £5,000 looks to be August 2007 (not 2006).
33. Attention was drawn also to the contractor and other parking permits and invoices associated with Latif Rugs Ltd⁶. The booking of 1 space for an event in January 2007 (Rihanna) and another event in February (Cage) were identified. In addition Streamline Merchant statements to show card payments related to Latif Rugs Ltd were submitted for the period October 2006 through to April 2007. Numbers of transactions per month amounted to 43 in March 2007 and up to 78 in January 2007. This set of documentation and more particularly the invoices gives some support for the involvement of Latif Rugs Ltd in the provision of parking services.
34. A copy of a contractor weekly parking permit to allow the stated registered vehicle to park in the front car park was produced for 4 to 8 April 2005. The fact that the permit is for a single vehicle for a week considerably reduces its significance. The appellant maintained that Latif House was the car park for contractors at Wembley Stadium but there was no information to show the numbers involved and how this type of parking was compatible with letting space to other firms nearby and the spaces reserved for occupiers of Latif House.
35. Monro Auto Centre occupied an adjacent unit on First Way. Correspondence about a contract for 25 car parking spaces at Latif House was ongoing in February 2005. There is nothing to confirm if and when the contract was completed. Invoice details cover a very short period 16 June 2006 to 31 July 2006.
36. Mr Vahid Ahmed wrote to confirm that his business Topspec Imports Ltd rented car spaces at Latif House between 2004 and 2007. Mr O'Hara said in 2006 he became aware of a car park operating at Latif House but no further detail was given.

March 2007 to 2017

37. A tenancy agreement was made on 1 March 2007 between Latif Tehran Group as landlord and WPL as tenant to let 60 car parking spaces, with tenancy agreements completed for the following years to 2017. The numbers of spaces let reduced to 35 in 2013, 30 in 2014 and 28 thereafter.
38. The Wembley Parking website was created on 15 March 2007⁷, before the official opening of Wembley Stadium on 19 May 2017. The website enabled the use of more advanced technology to book and get almost immediate confirmation of spaces online and which facilitated expansion of the parking

⁶ Appendix 12 in the appellant's documents

⁷ Appendix 10 in the appellant's documents

- service available to the public visiting the Wembley venues. After a short period of establishment the numbers of bookings showed a consistent and sustained high volume over the remaining period. This factor is seen by reference to and comparison between the protx confirmation emails pre May 2007 (4 bookings in March and 7 bookings in April 2007) and the Google checkout booking payment emails that commence on 7 May 2007 and go through to 19 June 2008⁸.
39. The totals of bookings each month/year were not summarised by the appellant but the Council estimated some 210 pages for May and a significantly larger number of bookings for June 2007. The key point is the sharp contrast in booking numbers and hence use of the car parking before and from May 2007. The volume of booking listings from 13 May 2007 to 17 September 2017 shows a similar high number of bookings⁹.
40. The list of events shows an increase in the total number of events per year (in the order of 110 to over 120). As noted above the list does not detail the number of parking spaces provided at Latif House for each event but the larger number of events would be expected to increase the opportunity for marketing the spaces.
41. The relevant point in the Streamline Merchant statements which the Council drew attention to is the very marked increase in the number of transactions post April 2007 – up from 48 to 806 in August 2009. In general the monthly transactions vary between around 500 to well over 1,000 with some lower totals in some months such as 395 July 2010, 240 July 2011. The WorldPay statements also show numbers of transactions in the hundreds per month (June 2014 to March 2017). The Google checkout payout data and lists add little more¹⁰.
42. The witnesses appearing at the inquiry primarily spoke about this period. Mr Patel first knew of the site in 2008, when in May MN Coachworks moved into a unit off First Way adjacent to Latif House and car park. He was aware that Monro Auto Centre, the previous occupier of the unit, rented spaces from Mr Latif, although his business did not need to do so. He described the car park as always busy on weekdays and was aware of a full car parking service in operation. People visiting the Stadium and Arena also parked there, the differences of event parking being more cars and people walking.
43. Mr Arrulapan confirmed that Euro Car Parts rented a unit in Latif House from mid 2008 to 2012 and that the company concluded a new contract for on-site parking in 2011. Mr Latif provided a lot of documentation related to Euro Car Parts, including a copy of a lease dated 1 September 2009 for unit 2¹¹. A copy of a contract (minus annexes) for the car parking spaces dated 11 June 2011 shows that WPL agreed to provide up to 60 car park spaces per day, subject to restrictions and unavailable dates. Relevant to the period 1 January 2007 through to 31 March 2017 are invoice details (which give the number of spaces) and also bank statements to indicate payments. The invoice details show that the number of spaces actually provided varied over the period. In the first half of 2007 the numbers of spaces provided generally were 40 or 50

⁸ Appendix 5 in the appellant's documents

⁹ Appendix 4 in the appellant's documents

¹⁰ Appendix 2 in the appellant's documents

¹¹ Appendix 14 in the appellant's documents

- on weekdays, whereas in 2011 to September 2012 spaces generally were in the 30s, increasing to 60s and 70s through to 2015/16 and reducing in number in 2017.
44. The Council did not seek to challenge this information and the probability is that Euro Car Parts used the Latif House car park on a 'contract' basis. The probability was that the use was confined primarily to weekdays, during the working hours. Whilst the details of restrictions were not included with the copy of the 2011 contract, the contract parking with the firm probably did not interfere with availability of the car park for evening and weekend events. However, for a four year period Euro Car Parts occupied a unit at Latif House and on that basis the contract parking could be regarded as ancillary parking.
 45. An employee of WPL, Mr Brady, stated that paid commercial car parking takes place every time there is an event at the Stadium or Arena and on a daily basis with Euro Car Parts and other businesses and events. He confirmed that he had no knowledge of the site pre summer 2008 when he started working at Latif House and therefore his evidence did not cover the period in dispute.
 46. The evidence of Mr O'Hara was related primarily to the listing of his premises in Atlas Road for car park bookings on Mr Latif's website from April 2008 and therefore has limited relevance.
 47. Copies of insurance cover for WPL for the period 15 June 2007 to 23 March 2018 and heavily redacted Vat Returns for WPL covering the period from 2009 (when WPL were over the VAT threshold) are noted but have limited significance to the main issue. Bank statements for WPL, particularly without a commentary, also contribute little new to the appellant's case.
 48. A short statement by Eurotyres UK Ltd dated 20 May 2007 stated that the firm used car parking at Latif House for parking their vehicles. Mr Latif recalled that this statement may have been prompted by a complaint by Wembley Stadium around that time. However it lacks detail and is of little weight. The Zionist Federation (ZF) wrote to confirm that it hired all the parking once in 2008 and again in 2013 when holding events at Wembley Arena. This is somewhat different to the appellant's summary description that the letter confirmed WPL have been providing ZF parking services since 2008.
 49. Correspondence between WPL and Wembley Stadium in the summer of 2007 relates more to intellectual property rights but it does indicate that WPL was recognised as providing organised public parking for events at Wembley Stadium. It is also reasonable to conclude that the concern of Wembley Stadium only occurred when the new Stadium became operational after the prolonged closure.
 50. In 2011 Mr Latif was contacted by Transport for London with a view to the installation of electric charging points in his 'Wembley Arena and Stadium car parks'. In 2009 it appears Mr Latif contacted the police with a view to ensuring safety and WPL achieved Safer Parking Awards from April 2012 to April 2018. This is consistent with a high level of public/event car parking, in view of a focus on maintaining the requisite standards of management, surveillance, lighting and a clean environment.

The Council's evidence

51. The Council considered that a series of aerial photographs from 1999 to 2017 illustrates the transient nature of parking throughout the period and the later changes made to the parking layout. Mr Latif was unable to say when the parking bays were marked out but believed it was before 2010.
52. Aerial photographs need to be treated with caution, not least because they are a snapshot in time and the exact date and time of day is not always specified or available. However, it is only in the June 2010 photo that marked parking bays stand out clearly in the main car park and along the access serving the Cannon Trading Estate units. In the photos up to and including the one dated 2006 an area of grass was clearly visible on the main car park frontage. This grass area is obviously replaced with bays by 2010, although late 2007 grass appears to have been present and the photo dated 2008 is indistinct on this point. The marked bays and loss of green space would have increased the parking capacity and improved circulation. Whilst the date is not certain, the improvement did not occur until after late 2007, based on the date given for the photos. All the photos up to and including 2012 show a limited amount of parked vehicles whereas the pattern in later photos is of a more heavily parked space.
53. A street view image dated June 2008 assists in dating the physical improvements. The main car park has no obviously marked bays and the grass area on the frontage appears to have been replaced by concrete and signage for Latif Rugs, not parking spaces. This would accord with the impression given by the 2008 aerial photo. The absence of any signage indicating availability of parking is notable.
54. Accounts for Wembley Parking Ltd were produced for the year ended 31 May 2008 through to the year ended 31 May 2016. The period shows gradual growth of the company, with a very significant increase in capital from around 2012.

Change in Character and off-site effects

55. Mr Latif's evidence on this matter was very limited, referring to the regulation and control of parking on the site by patrols and the changes introduced in the ways of payment for event parking.
56. The Council drew a distinction between the very limited effects of contract parking by local firms and the adverse effects of event parking such as traffic congestion, disruption to business activity, loss of amenity for local residents and extension of activity into the evening and night. The car parking for events at the Stadium is officially limited to 2,900 with the aim of easing pressure on the highway infrastructure and encouraging use of public transport to secure environmental improvements. With the full reopening of the Stadium in May 2007 there was a sea change in the frequency and intensity of event parking at the site, leading to significant adverse off-site planning consequences. The character of the parking at the site materially changed in May 2007.

Conclusions

57. By way of introduction, the test of the evidence is the balance of probability. Moreover the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the local planning authority

has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable there is no good reason to dismiss the legal ground of appeal provided the appellant's evidence is sufficiently precise and unambiguous.

58. Car parking not associated with the occupiers of Latif House and the units to the rear took place on the land before the relevant date of 2 March 2007. This parking was by local firms (contract parking), by visitors to local events primarily at Wembley Stadium and Arena (event parking) and possibly by contractors working on the new Stadium.
59. More particularly the contract parking has not been fully quantified. The 25 spaces for Monro Auto Centre were not thoroughly documented or precise. The event parking was occasional and at a low, intermittent level by visitors to local events primarily at Wembley Stadium and Arena. Such parking would have been substantially interrupted by the closure and redevelopment of Wembley Stadium for the years after 2000 and during the refurbishment of Wembley Arena for a number of months around the end of 2004 and well into 2005 at least. The evidence on contractor parking is very weak and it is not possible to gauge the level of such parking. The evidence for the period up to 2004 lacks any substance in relation to all types of non ancillary parking. Even though Latif Rugs Ltd took a lease on 60 parking spaces in 2004 there are no details as to how the non ancillary parking worked alongside the parking provision for tenants of Latif House.
60. Before March 2007 the car park appears to have been maintained in a similar physical condition with limited investment and improvements to the surface, layout and signage. Any non ancillary use was absorbed into the business activity of the surroundings and event parking was of a sufficiently small scale to have minimal planning consequences and off-site effects.
61. After the relevant date the major change that occurred in the area was the completion of the Wembley Stadium project in March 2007 and the full opening of the new Stadium to public events in May 2007.
62. The appellant's business arrangements associated with the provision of parking services also underwent change and development at the beginning of March 2007. WPL was established and a new website launched. These developments built on experience and technological innovation and enabled the business to expand and better promote the event parking. The very substantial increase in event bookings and transactions is well catalogued and shows a sustained high level throughout the period from May 2007.
63. There is a range of evidence to support the car parking business being directed to attracting and sustaining the custom of visitors to the area, in addition to the contract customers. The capacity and circulation of the car park was increased and initiatives were taken to achieve safer parking awards.
64. The evidence shows contract parking was primarily associated with the provision of spaces for Euro Car Parts. The available contract information indicates that such parking was not allowed to disrupt or restrict the availability of the car park for events.
65. The probability is that since May 2007 the car park was in use for much longer hours into the evening and at weekends. The Council's evidence indicates the

event parking spilled over into the adjacent trading estate. The parking outside the typical working day would have been likely to attract people unfamiliar with the area with arrivals and departures concentrated into short periods of time. Marshalling and parking management would have become much more obvious and necessary to direct traffic off the highway and to available spaces. Queuing and obstruction of free movement along the highway was demonstrated by the Council's evidence. The increase in event parking would have contributed to greater pressure on the local highway network and detracted from the amenity of the local environment. Significantly Mr Patel commented on event parking bringing more cars and changing the pattern of movement.

66. In conclusion and on the balance of probability the material change of use occurred after 2 March 2007. The breach of planning control is not immune from enforcement action and is not lawful. The appeal on ground (d) does not succeed.

The Requirements of the Notice

67. There was no appeal on ground (f). However, I have reviewed the wording of the steps in light of the agreed corrections to the description of the breach. The Council also confirmed that it had no objections to variations similar to those set out in an appeal decision included in its appeal documents.
68. The purpose of the enforcement notice is to remedy the breach of planning control, which is the unauthorised material change of use of the land as set out in the proposed corrected description. It follows that the unauthorised use should be required to be discontinued. To simplify matters steps 1, 2 and 3 are able to be combined into a single step, with the wording reflecting that of the breach. The use of the word 'permanently' is unnecessary having regard to the provisions of Section 181(1) of the Act, which state that compliance with an enforcement notice shall not discharge the notice. Steps 5 and 6 are excessive in that the car park areas would be able to remain for use as ancillary car parking.

Appeal on ground (g)

69. The issue is whether a compliance period of 1 day is reasonable.
70. The appellant considered the period should be two months to allow him to serve notice on third parties, terminate agreements and allow for any errors or disputes.
71. The Council's final position on the matter was that any extension to the compliance period should not overlap with the start of the Premier League season because the number of events would increase to more than one a week, with all the adverse planning consequences for residents and objectives for the regeneration area. In evidence a slightly longer period for contract parking was indicated.
72. Relevant considerations are what the appellant will have to do in practice to carry out the required remedial steps and consequently how much time is reasonable to permit for that purpose. The implications for the business and proportionality need to be taken into account. Also relevant are the adverse effects of the breach of planning control, as indicated by the reasons for issuing the notice.

73. No significant physical works would have to be undertaken. The more time consuming actions would be as outlined by the appellant in respect of any contract parking. Individual bookings of parking for events are more than likely to take place nearer the time and require less notice. No details have been provided of notice periods or of advance bookings in support of the appellant's case, although I note a month was stated in the 2011 contract with Euro Cart Parts.
74. On the other side of the balance the unauthorised use has adverse planning consequences and enforcement should be seen to be effective to maintain public confidence in the planning system. I also have in mind that in the two appeal decisions referred to where the notice was upheld the compliance period was increased to one week. There have been no sufficiently strong or detailed evidence to justify a longer period in this case, especially for event parking.
75. I conclude that a staged compliance period is appropriate. A reasonable compliance period is one week for event parking and a month is reasonable for contract and all other forms of non ancillary parking. The appeal on ground (g) succeeds to this limited extent.

Conclusion

76. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

APPEAL 2

The application

77. The plans to accompany the LDC were clarified at the inquiry. It appears that the plan of the land with the appeal documents was superseded. Mr Latif agreed that the correct plan was the plan with a red line round the main car park to the front of Latif House and the spaces on adjoining land, with a blue line round the remaining land in the title (primarily the building Latif House and the units at the rear). An additional plan for consideration shows the location of the commercial car parking spaces in green. The Council confirmed that the plan issued with the decision on the LDC reflected the additional plan.
78. The appeal form confirmed that use for which an LDC is sought is the use of the site as a commercial car park, a sui generis use class. I therefore understand the 'mixed use' stated in the description given on the application form refers to the office/industrial use. The response to the pre-inquiry note also confirmed that the appellant considered the planning unit to be the hardstanding at Latif House as shown on the car park plan (outlined in red). Bearing in mind, too, the case presented by the appellant and the examination of the evidence in Appeal 1, the term 'commercial car park' is a car park where contract and/or event parking is provided, the contract parking being unrelated to the tenants/businesses occupying Latif House.

Main issue

79. This is whether the decision of the Council not to issue a LDC is well founded.
80. For the purposes of the 1990 Act uses and operations are lawful at any time if they do not constitute a contravention of any of the requirements of an enforcement notice then in force (section 191(2)(b)). In this instance the

appeal was made against the enforcement notice on the day after the notice was issued and therefore before it took effect. The Planning Practice Guidance advises that an enforcement notice is not in force when an enforcement appeal is outstanding. On this basis the second reason as to why the Council decided that the use was not lawful is not well founded. The Council did not pursue the matter at the inquiry.

81. Therefore attention focused on the first reason set out in the Council's decision – whether or not the identified land has been used continuously as a commercial car park for at least 10 years.

Reasons

82. To be successful the appellant must show on the balance of probability that the commercial car park use was lawful at the time of the application, namely 3 March 2017. In this case the evidence should enable the precise scale or level of use to be stated. The appellant relied on the use becoming lawful because the time for enforcement action has expired.
83. The appellant relied not only on the evidence submitted with the application but also the evidence submitted to support his case in respect of Appeal 1. On the basis of this evidence I concluded in Appeal 1 on the balance of probability that it was not until May 2007 that the car park use became a primary use as part of a mixed use, following a material change in the use of the land at that time. Clearly the subsequent period through to March 2017 falls short of the necessary 10 years.
84. In view of the area and use identified in the LDC application I will revisit the evidence to see if a certificate could be issued in respect of a commercial car park, although the details (in paragraphs 19 to 56 above) need not be repeated here. As a general observation, it is not sufficient to show that commercial car parking per se was taking place on the land continuously over a ten year period.
85. Looking at the period 1993 to 2004 the evidence is not sufficiently precise to show commercial car parking amounted to a single primary use and that it was dominant over ancillary parking for the Latif House premises. The event parking was not at a material level and there was no detailed evidence on contract parking.
86. From 2004, there is evidence to support Latif Rugs Ltd being involved in the provision of parking services. However, the fact that in 2004 Latif Rugs Ltd entered into a tenancy agreement to enable the letting of 60 car parking spaces is not adequate to change the use of land to a commercial car park in a freestanding planning unit. The 2004 contract was for a two year term and no documents were submitted to show what happened at the end of the term.
87. Little was submitted about the use of the car park by Topspec Imports Ltd over the period 2004 to 2007 and whether or not in fact the business was based at Latif House. Monro Auto Centre possibly had a contract for 25 spaces but the term is unclear and a list of invoice details is confined to a very limited period in June / July 2006. The subsequent occupier of the unit, MN Coachworks, did not rent spaces at Latif House, as confirmed by Mr Patel's evidence.
88. The contract(s) with and the volume of associated information regarding Euro Car Parts shows that the car park was used by the firm, probably including

times when the firm did not occupy a unit at Latif House. The critical period is before May 2007, where the documentation is restricted to the invoice list for the early months of 2007. There are no related clear payment details. The spaces used for weekday parking consistently fell below 60 and for January were significantly below that figure.

89. During the Wembley Stadium and Arena projects the car park may have been used by contractors for parking but the evidence lacks coherence and is very weak in terms of demonstrating the numbers and times involved.
90. The invoices raised by Latif Rugs during January to March 2007 for parking for periods of varying length lend some support to the appellant's case but again the evidence lacks precision and context.
91. The use of the car park for events parking would have been affected and interrupted by the redevelopment of the nearby venues. I concluded in considering Appeal 1 that the evidence on bookings for the period April 2006 to April 2007 indicated event parking was intermittent and very limited in terms of numbers of spaces. It was only in and after May 2007 that event bookings showed a substantial and sustained increase.

Conclusion

92. The evidence is not sufficiently precise to demonstrate that a commercial car park was lawful on 3 March 2017 by reason of the passage of time. The appellant did not seek to argue that the use was lawful because it did not involve development or require planning permission.
93. For the reasons given above the Council's refusal to grant a certificate of lawful use or development in respect of the use of the site as a commercial car park (a sui generis use class) was 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.

FORMAL DECISIONS

Appeal 1 Ref APP/T5150/C/17/3170810

94. It is directed that the enforcement notice is corrected in Schedule 2 by the deletion of the description of the alleged breach of planning control and the substitution of: "Without planning permission the material change of use of the land from office/industrial/warehousing to a mixed use as office/industrial/warehousing and car parking (i.e. parking that is not ancillary to the office/industrial/warehousing use)."
95. It is directed that the enforcement notice is varied in Schedule 4 by the deletion of Steps 1 to 5 inclusive and their replacement with: "Cease the use of the land for car parking that is not ancillary to the office/industrial/warehousing use and remove all vehicles associated with the unauthorised parking use from the land."
96. It also is directed that the enforcement notice is varied in Schedule 5 by the deletion of '1 day after this notice takes effect' and its replacement with:
 - One week after this notice takes effect in relation to event parking, and

- One month after this notice takes effect in relation to all other forms of car parking that is not ancillary to the office/industrial/warehousing use.

97. Subject to the correction and variations above, the appeal is dismissed and the enforcement notice is upheld.

Appeal 2 Ref APP/T5150/X/17/3179530

98. The appeal is dismissed.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Ali Latif	Advocate and witness
He called	
Mr Rikesh Patel	MN Coachworks
Mr David Arrulapan	Head of Security and Maintenance Facilities Manager Euro Car Parts Ltd
Mr Timothy Brady	Wembley Parking Ltd
Mr Tommy Lo	Jadesan Co
Mr John O'Hara	Director of Formoss Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Tom Wicks BA(Hons) LLM	Director of Enforcement Services instructed by the Chief Planner, London Borough of Brent
He called	
Mr Tim Rolt BA(Hons) BTP MRTPI	Planning Enforcement Manager, London Borough of Brent

DOCUMENTS submitted at the inquiry

- 1 Notification letters of the appeals/inquiry
- 2 Appeal decision ref APP/T5150/C/17/3175131 dated 18 June 2018
- 3 Appeal decision ref APP/T5150/C/17/3173442 dated 8 May 2018
- 4 Appeal decision ref APP/T5150/C/17/3174246 dated 4 April 2018
- 5 Bundle of photographs submitted by the Council
- 6 Street View photograph of the site submitted by the Council