The Planning Inspectorate

Appeal Decision

Site Inspection on 8 April 2019

by Graham Self MA MSc FRTPI

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

Decision date: 11 April 2019

Appeal Reference: APP/T5150/C/18/3201973
Site at: Chalkhill Primary School, Barnhill Road, Wembley HA9 9YP

- The appeal is made by Ms Rose Ashton on behalf of Chalkhill Primary School (see "Procedural Matters" below) under section 174 of the Town and Country Planning Act 1990 as amended, against an enforcement notice issued by the London Borough of Brent Council.
- The council's reference is E/17/0918.
- The notice is dated 28 March 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, the material change of use from a school to a mixed use as a school and a public car park (i.e. parking that is not ancillary to the use as a school)".
- The requirements of the notice are:

  STEP 1 Permanently cease the use of the premises as a public car park.

  STEP 2 Remove all vehicles associated with the use as a public car park from the premises.
- The period for compliance is one week.
- The appeal was originally made on grounds (d) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Ground (f) was later withdrawn.

Summary of Decision: The appeal fails.

Procedural Matters - Identity of Appellant

1. Ms Rose Ashton is named as the appellant on the standard form lodging this appeal. No agent was named. The appeal has been processed as having been made by "Chalkhill Primary School".

2. To be strictly accurate, Ms Ashton (who is evidently the executive head teacher) should be treated as the appellant. However, it is doubtful that she would have had sufficient legal interest in the land to have a right of appeal. Taking into account the use of phrases such as "we as a school" in the appeal documents, it seems that Ms Ashton was in effect acting as agent for the school when the appeal was lodged. The Planning Inspectorate has also accepted correspondence from the school Bursar as representing the appellant. In these circumstances I consider it reasonable to regard the appeal as having been made by "Chalkhill Primary School" as a corporate body, with Ms Ashton having acted as the agent.

Ground (d)

3. This ground of appeal is a claim that the development enforced against has become "immune" from enforcement and therefore lawful through the passage of

time. The relevant period in this type of case involving the use of land is ten years before the date of the enforcement notice - that is to say, to succeed on ground (d), the appellant has to show that the material change of use alleged in the notice occurred by or before 28 March 2008 (ten years before 28 March 2018) and has since continued. The onus of proof is on the appellant, the appropriate standard of proof being the balance of probability.

4. Evidence has been submitted showing that on two occasions in 2007 (Sunday 5 August and Saturday 15 September) the school playground was hired by a Mrs P Patel for use as a car park. Payments of £225 were apparently made for each of these events.[1] The arrangement was made direct with the school. Then in May 2008 a contract was signed with a company called Parkers Car Parks Limited, who became responsible for managing car parking lets at the school until January 2014, when the contract was ended and the school took over the management of car parking. In the year 2008-9 (this appears to be the financial year from April to April), the playground was let on 17 separate days for car parking. In the following years up to 13 January 2019, the number of car park lets varied between 16 and 41, producing an income between about £7,600 and £33,000.

5. The initial parking arranged with Mrs Patel appears to have been to cater for guests attending weddings at the former Brent Town Hall. Later, the parking was evidently linked (at least mostly) with events at Wembley stadium - a letter from a Director of Parkers Car Parks Limited states that the company "runs car parking for Chalkhill School for events at Wembley Stadium".[2]

6. I can understand why the school believes that because non-school parking started to happen in 2007, it was too late for the council to take enforcement action in March 2018. However, the appellant's argument is misguided, for reasons which I now explain. I do so in a non-technical way as far as possible, bearing in mind that the school has apparently not been professionally advised.

7. For the purposes of planning law, there is a difference between what might be best termed an *activity* and a *material change of use of land.* For example, the occupier of a house might host social events such as parties from time to time; but unless the parties become of such frequency, scale or nature as to change the character of use of the property or have a significant effect on the neighbourhood, the party-holding activity would normally be ancillary or incidental to residential use and would not amount to a material change of use of the property. The term "material change of use" is within the definition of development in Section 55 of the Town and Country Planning Act 1990, and in this context the word "material" is important. Whether the scale or intensity of an activity becomes such as to cause a material change of use of land (and here I cannot avoid using a semi-technical legal term) is a matter of fact and degree.

[1] The school's schedule of income from car parking shows two events in 2007 producing £500, which does not square with other evidence that there were two lets each producing £225. Among the appellant's evidence there is also a copy of what appears to be a bank paying-in slip for £225 labelled "Pyramid Club Summer Term" dated 24 July 2007, and an entry in a ledger code listing states "Let car park 19/9/07; but the former apparently does not claim to be related to non-school car parking (as the appellant's statement only claims that the school began renting out the premises as a car park in August 2007) and the latter evidently relates to pre-payment of the 15 September event. A copy of a bank statement covering October 2007 contains a highlighted item referring to "Deposit at Wembley Park"; but "Wembley Park" appears to be the name of a bank branch, not a reference to Wembley-related car parking.

[2] For some years the contract with Parkers was evidently managed through Oakington Manor School, but Parkers were contracted direct by Chalkhill School from January 2014.

8. The two occasions in 2007 when non-school-related parking took place appear to have been on a limited scale and were not open to the general public. The available evidence indicates that no further non-school-related parking occurred until after the contract was started with Parkers in May 2008. A key point is whether, in the period before 28 March 2008, the local planning authority could have taken enforcement action under planning legislation; and I doubt that would have been possible. An intermittent activity, if repeated frequently enough, can trigger a material change of use of land; but before the start of the contract arrangement with Parkers, any non-school parking appears to have been so sporadic and limited in scale as not to amount to a material change of use.

9. After May 2008, the situation changed. The use of the school grounds for non-school parking became more frequent and more organised, with commercial advertising and booking arrangements available to the general public. Some of the evidence suggests that in recent years this was linked to Tottenham Hotspur's use of Wembley stadium.[3] The area used for "event parking" also appears to have become larger than occurred on the two occasions in 2007 - Mrs Patel evidently only rented the school playground,[4] whereas photographs of Wembley-related parking in September 2017 show that cars were also parked in the staff car park. The parking capacity when operated by Parkers was evidently up to 170 spaces. This means that the streets near the site would see additional vehicle movements of up to 340 (total two-way) and additional pedestrian movements by several hundred people (almost certainly many more than 340 total two-way movements depending on car occupancy) at the beginning and end of events such as football matches.

10. The effect of those changes was to make car parking a more significant component in the overall use of the land than the two wedding-related events in 2007. As the appellant has pointed out, no evidence of complaints has been provided by the council, and I note that the council's statement refers only generally to "pirate parking in and around Wembley." The absence of specific details identifying complainants might be for confidentiality reasons. Be that as it may, I judge that the extent, frequency or amount of car parking which took place after May 2008 had what the courts have termed "planning consequences" which did not arise in the period before May 2008. The fact that the vehicular access to the car park is off the end of a cul-de-sac in a corner of a residential estate would also have made non-school parking-related vehicle and pedestrian traffic more likely to be noticeable or intrusive, and thereby more "material", than might be the case on a site next to, say, a busy main road.

11. The "planning unit" in this instance is the school, and at some point after May 2008 (exactly when does not matter) a material change of use of the planning unit occurred, to mixed use as a school and for car parking unrelated to use as a school. Therefore the material change of use described in the enforcement notice

[3] The Tottenham Hotspur logo is shown in the copies of advertisements within the council's evidence.

[4] The appellant's statement (in the second and third paragraphs) refers to "renting out the school playground as a car park" in 2007 and states: "the school was able to offer the school playground for parking". The references to *the school playground* suggest that the area used for the two parking lets in 2007 did not include the adjacent community play area (the tarmac-surfaced area marked out as sports pitches); but even if that were so, there is certainly no mention of the use of the staff car park at that time. Later, after May 2008, as I verified during my inspection the area let for parking to achieve up to 170 spaces included all three - the school playground, the community play area and the staff car park.

occurred within the period of ten years before 28 March 2018,[5] and had not gained immunity through the passage of time. I conclude that the appeal on ground (d) does not succeed.

Other Matters

12. The appellant has not claimed that the mixed use enforced against did not constitute a breach of planning control by pleading ground (c) of Section 174(2). Nor has ground (b) been pleaded, contending that the development enforced against has not occurred. However, parts of the school's submissions appear to be making one or other of such claims. For example, in their comments dated 3 April 2019, it is claimed that: "There has been no material change to mixed use as the car park function only accounts for 10% of the year". It is also argued that the parking is ancillary to the main function of the school and has no impact on neighbouring residents.

13. I am not obliged to consider grounds not pleaded, especially when argued in what should be final comments. In any event, the proportion of time in a year when car parking has taken place is not determinative. As I have mentioned above, the car parking has recently had planning consequences and the evidence indicates that these have been sufficient to create a material change of use to mixed use. There are "permitted development" rights for temporary uses of land for a limited number of days per year. However, such rights are subject to restrictive provisos, and do not apply to the development subject to this appeal because the land in question is within the curtilage of the school buildings.[6]

14. In its submissions the school has explained that the parking contract is a valuable source of finance which helps to support the school in various ways, and I appreciate that money from car parking has been put to good use. However, the appeal on ground (d) of Section 174(2) has to be determined solely as a matter of fact and law. There is no application for planning permission before me - the application deemed to have been made under Section 177(5) of the 1990 Act lapsed because the fee was not paid - and issues such as the educational or financial benefit to the school or to the community playground have no bearing on a ground (d) appeal.[7]

15. The appellant has stated that "the school would like to apply for a certificate of lawful use to prevent any further confusion surrounding the car park lets and to secure the school's additional income". In view of my decision on the appeal, there is no case for granting a certificate of lawfulness.

16. I am aware of a recent appeal decision relating to car parking at Oakington Manor

[5] A letter from director of Parkers Car Parks Limited refers to "the 11 years of operating the car park at Chalkhill School". This letter is dated 18 February 2019. The period between the evident start of the contract with Parkers in May 2018 and February 2019 is actually less than 11 years but in any case as I have explained above, the relevant ten year period is the period before the date of the enforcement notice.

[6] This refers to Class B of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended. The exclusion where land is within the curtilage of a building is in paragraph B.1 (b) of Class B.

[7] To explain this point in another way: when deciding an application for planning permission, or an appeal against refusal of permission, or an appeal on ground (a) of Section 174(2) against an enforcement notice together with a deemed application, it may be appropriate to weigh public interest benefits against disbenefits. That does not apply to appeals on ground (d) of Section 174(2) against enforcement notices, where the issue is solely: has the development become lawful or not?

Primary School. Reference is made to it in the appellant's final comments, at a stage in the written appeal process when new evidence can only be introduced in exceptional circumstances, which are not apparent here. It has not influenced my decision.

Formal Decision

17. I dismiss the appeal and uphold the enforcement notice.

G F Self

Inspector