

Appeal Decision

Hearing held on 23 November 2016

Site visit made on 23 November 2016

by J Dowling BA(Hons) MPhil MRTPI

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

Decision date: 16 December 2016

Appeal Ref: APP/Y0435/W/16/3145928

The Premier Academy, Saffron Street, Bletchley, Milton Keynes MK2 3AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Warren Harrison against Milton Keynes Council.
 - The application Ref 15/02346/FUL is dated 18 September 2015.
 - The application sought planning permission for proposed school canteen, dance and IT facilities without complying with conditions attached to planning permission Ref 13/02594/FUL, dated 25 April 2014.
 - The conditions in dispute are Nos 6 and 12 which state that: the building hereby permitted shall be used only for the purposes directly associated with the use of the application site as a whole as a combined school and shall not be hired out for any other purposes (condition 6) and the opening hours of the hall hereby permitted shall be restricted to between 0700 and 1830 Monday to Friday only and not at all at weekends and bank holidays (condition 12).
 - The reasons given for the conditions are: to safeguard the amenities of nearby residential occupiers (condition 6) and in the interest of highway safety and the amenity of local residents (condition 12).
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Decision

1. This appeal is allowed and planning permission is granted for a school canteen, dance and IT facilities at The Premier Academy, Saffron Street, Bletchley, Milton Keynes MK2 3AH, in accordance with application Ref 15/02346/FUL dated 18 September 2015, without compliance with conditions Nos 6 and 12 previously imposed on planning permission Ref 13/02594/FUL dated 25 April 2014, and subject to the conditions set out in the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by Mr Warren Harrison against Milton Keynes Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect that the use of the building outside of school hours would have on the living conditions of the occupants of adjoining residential properties and highway safety.
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Reasons

4. The Premier Academy is a three form entry primary school and nursery which is located within the suburb of Water Eaton. The school has been on the site since the 1950's evolving in an ad hoc way which has resulted in a variety of buildings of differing ages and architectural styles. To the south of the main school buildings are two recently constructed halls including Eat 'n' Hall which is the subject of this appeal.
5. Planning permission for Eat 'n' Hall¹ was granted subject to a number of conditions including limiting the use of the hall to be only used in association with the school (No 6) and a restriction on the hours of use (No 12). The reasons given for attaching these conditions was to safeguard the living conditions of the occupiers of adjoining residential properties and highway safety. I consider that given the predominantly residential nature of the surrounding area that the imposition of the conditions at the time that the original consent was granted was necessary and met the legislative test for conditions so that any changes to how and when the hall was to be used could be considered and controlled by the Council.
6. The proposed removal of these conditions would enable Eat 'n' Hall to be hired out for non-school purposes and be used outside of school hours, seven day a week, 365 days of the year.
7. The existing planning permission is a material consideration and, given that the building is established, it is the effect of opening the hall to use by non-school users outside of schooldays and hours which falls to be considered.
8. From what I have read and heard the main concerns of local residents relate to noise from both the use of the building and from people and vehicles accessing and moving around the site and the pressure on the surrounding network from vehicles parking and accessing the site.

Noise

9. The same Environmental Noise Assessment that was submitted for the appeal on the adjoining Harrison Hall² and which assessed typical levels of noise generated by traffic, including vehicles manoeuvring, opening and closing of car doors and noise resulting from the congregation of adults and children against lower background noise was submitted in support of this appeal. The report concluded that there would be no unacceptable harm to occupiers of nearby residential premises from traffic noise up to 23:00 hours. As far as I am aware with the exception of some additional on-site parking circumstances have not changed at the site since the report was undertaken. Given that Harrison Hall has a larger capacity to Eat 'n' Hall I consider that the findings of this report, which models for higher levels of activity and larger numbers than the current proposal, are applicable and as a consequence I have given it substantial weight in forming my decision.
10. The building is located centrally within the site, some distance from the nearest residential properties. Furthermore, both the dance studio and the music room benefit from existing sound insulation and I am satisfied that the levels of

¹ Planning application ref: 13/02594/FUL

² Appeal ref: APP/Y0435/W/15/3002602

amplified noise could be adequately controlled through the use of a suitably worded condition as suggested by the Council's Environmental Health advisor.

11. As a consequence I consider that it would be unlikely that the proposal would generate unacceptable levels of noise resulting either from uses within the building or associated activity around the site that would affect adjoining residents from use of the building during the extended hours proposed. As such the proposal would accord with the National Planning Policy Framework (the Framework) which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings³ and mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions⁴. This is reflected in saved policy D1 of the Milton Keynes Local Plan 2001-2011 (2005) (the Local Plan) which seeks to protect the living conditions of existing residents.

Highways

12. It is very clear from the evidence I have read and heard and from my site visit that there are significant problems, given the tight urban grain of the adjoining residential area, regarding how the school is accessed at school drop off and pick up. It is evident from the submissions made that the volume of traffic and parking on the surrounding side roads is affecting the day to day living conditions of local residents. However, whilst I acknowledge the concerns and frustrations that local residents have expressed this appeal relates to the use of Eat 'n' Hall outside of school hours and the current arrangements for school drop off and pick up are not the matter before me.
13. During the school day on-site parking is reserved for use by staff. As the proposal would enable the use of the building outside of this time users of Eat 'n' Hall would be able to utilise the parking on site rather than park on the surrounding residential roads as happens at school drop off and pick up. Since the appeal for Harrison Hall was allowed the existing parking on site has been reconfigured and an additional area of parking has been created. Given that the layout and size of Eat 'n' Hall limits both the types of activity that can be undertaken and the capacity of the building I consider that the amount of on-site parking available at the site would enable most, if not all, users to park on site.
14. Whilst the proposal would result in additional vehicle movements on the surrounding road network these would be outside of the morning and afternoon peaks and as a result I consider could be satisfactorily accommodated within the existing road network without giving rise to congestion.
15. As a result I conclude that the proposal would not give rise to highway safety issues and as a consequence would be in accordance with Policy D1 of the Local Plan which advocates that planning permission should be refused where additional traffic generation would overload the existing road network or cause undue disturbance, noise or fumes.

³ Paragraph 17 of the National Planning Policy Framework (2012)

⁴ Paragraph 123 of the National Planning Policy Framework (2012)

Other matters

16. At the Hearing there was some discussion about whether or not the Inspector considering the previous appeal for Harrison Hall had predicated their decision on the implementation of a planning permission for a new access from Drayton Road⁵. Although I am aware of the decision for Harrison Hall and the proposed new access road I have considered this appeal on the basis that the current access arrangements would be used.

Conditions

17. The Planning Practice Guidance (the PPG) advocates that to assist with clarity decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged⁶. I note that the Council have followed this guidance in their list of suggested conditions.
18. Paragraph 206 of the Framework sets out a number of tests that conditions need to meet. I have considered the conditions suggested by the Council against paragraph 206, the advice contained within the PPG and the discussions at the Hearing. Where necessary I have adjusted their wording in the interests of clarity.
19. Conditions restricting the use of the hall to uses within Class D1 (non-residential institutions) and Class D2 (assembly and leisure) are necessary for clarity and in the interests of adjoining residents as these reflect the use of the wider school site. An hours of use condition for both the use and when amplified sound may be played is relevant to provide clarity over when the building can be used and to protect living conditions.
20. Limiting only one building at the site to be available for hire at any one time and requiring on-site parking to be made available to hall users is necessary in order to limit capacity, ensure that sufficient on-site parking is available and to protect living conditions.
21. Conditions 6-10 were attached to the original planning permission and for clarity and in accordance with the guidance contained within the PPG I consider it necessary to repeat them here.
22. Two conditions suggested by the Council would require the implementation of the planning permission allowed at appeal for the access from Drayton Road to be implemented and once implemented that users of the hall would then be required to use this as the means of access to Eat 'n' Hall outside of school hours. The Council consider that these conditions are necessary in order to reroute traffic away from the existing entrance in order to protect the living conditions of local residents. The evidence submitted with this appeal assesses the effect of the proposal on the basis of using the current access and for the reasons I have already outlined I am satisfied that the proposal would not adversely affect the living conditions of local residents or highway safety. Furthermore, even if the access road is implemented there is a condition on the permission that restricts its use to the beginning and end of the school day only. Thus the condition as suggested by the Council would require an application to vary or remove that condition. As a result I consider that the

⁵ Appeal ref: APP/Y0435/A/14/2212390

⁶ Paragraph: 031 reference ID: 21a-031-20140306

conditions as suggested would not meet the tests set out in the Framework as they are neither necessary nor reasonable.

23. The Council have also suggested a condition requiring that the parking area beside Eat 'n' Hall be completed and a parking management plan be submitted. On visiting the site it became apparent that the parking area had already been provided and therefore I consider that the first part of this condition is unnecessary. Whilst I acknowledge that a condition requiring a parking management plan was not attached to the recent planning permission for Harrison Hall given the level of concern regarding parking and that the ability of future users to park on-site is key to mitigating the effect of the proposal I consider that a condition requiring the submission and approval of a parking management plan would be necessary and would therefore meet the tests set out in the Framework.

Conclusion

24. For the reasons that I have given I conclude that the appeal should be allowed and that planning permission should be granted subject to the conditions that I have outlined.

Jo Dowling

INSPECTOR

APPERANCES

FOR THE APPELLANT

Paul Smith MRTPI	Apex Planning
Warren Harrison	Applicant

FOR THE LOCAL PLANNING AUTHORITY

Katy Lycett	Senior Planning Officer, Milton Keynes Council
Cllr Andrew Geary	Chair Development Control Committee

INTERESTED PARTIES

Reginald Edwards	Water Eaton Residents Association
Linda Poizat	Local resident
Michael Willis	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

Document 1	Copy of planning permission ref 13/02594/FUL
Document 2	Copy of costs application by Apex Planning on behalf of the appellant

DOUCMENTS SUBMITTED AFTER THE CLOSE OF THE HEARING

Document 1	Copy of Council's response to the appellants cost application dated 30 November 2016
Document 2	Email dated 7 December 2016 from the appellant regarding wording of conditions following discussions with the Council
Document 3	Email dated 7 December 2016 from appellant providing details of the capacity of Harrison Hall following request at the Hearing from the Inspector
Document 4	Email dated 7 December 2016 from the appellant responding to the Council's response to their costs application

Schedule of conditions

1. The hall known as Eat 'n' Hall shall not be used for purposes other than those falling within Classes D1 and D2 of the Schedule of the Town and Country Planning (Uses Classes) Order 1987, or in any provision equivalent to those classes in any statutory instrument revoking and re-enacting that Order without modification.
2. The hall shall not be used outside of the hours 07:00 to 23:00 on any day, and no amplified sound shall be played outside of the hours 08:00 to 22:30 on any day.
3. No amplified sound shall be played within the building known as Eat 'n' Hall without the prior installation of a noise limiting device set to a maximum level of 70 dB. Once installed this device shall be retained and used in perpetuity.
4. No part of the Eat 'n' Hall building shall be available for hire during any time when any other part of the school site including Harrison Hall is in use.
5. The parking spaces within the school grounds shall be made available for parking at all times when the hall is hired out.
6. All plant and permanently fixed equipment (heating, ventilation, chiller units etc.) associated with the development shall operate at a rating level of 10dB below the prevailing background noise level.
7. The pedestrian gate leading from Tiffany Close shall be kept locked except between the hours of 08:10 hours and 09:15 hours and between 14:45 hours and 15:45 hours Monday to Friday and shall be opened at no other times.
8. The emergency vehicular access from Tiffany Close shall be used only by vehicles belonging to the Police, Fire or Ambulance service as an emergency access and by no other vehicles. The emergency access may not be used for any other purposes.
9. The school shall not accommodate more than 630 pupils and/or increase form entry above three forms per academic intake.
10. Before it is brought into use all plant and machinery shall be enclosed with sound insulating material in accordance with a scheme to be submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented and retained in that form.

11. Prior to the use of Eat 'n' Hall for any non-school purposes a parking management plan for its use for non-school purposes shall be submitted to and approved in writing by the Local Planning Authority and the use of Eat 'n' Hall shall be carried out in accordance with the approved plan.