
Appeal Decision

Hearing held on 21 June 2017

Site visit made on 21 June 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 26 June 2017

Appeal Ref: APP/C5690/W/16/3161856

First and Second Floors, Capital House, 43-47 Rushey Green, Lewisham, London SE6 4AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Ansa Hanif against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/15/093490, dated 25 August 2015, was refused by notice dated 31 August 2016.
 - The development proposed is change of use from Class D1 educational use to a mixed use within Class D1 for places of worship and ancillary uses and Class D1 educational and ancillary uses.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from Class D1 educational use to a mixed use within Class D1 for places of worship and ancillary uses and Class D1 educational and ancillary uses at First and Second Floors, Capital House, 43-47 Rushey Green, Lewisham, London SE6 4AS in accordance with the terms of application Ref DC/15/093490, dated 25 August 2015, subject to the attached schedule of conditions.

Procedural Matters

2. The first and second floors of Capital House, as shown on the plans submitted at the hearing (Document 1), are already being used for a mixture of place of worship and educational purposes. It currently includes a number of different churches which are as follows: Mountain of Fire & Miracle Ministries; Fountain of Hope; Celestial Church of Christ, Salvation; Pentecost Baptist Church London; Watchman Catholic Charismatic; Glory of God New Jerusalem; Jehova Mercy Temple; Jehova Adonai Kingdon Worldwide; Redeemed Christian Church of God and Holy Pentecostal Church of Christ. The appellant confirmed at the hearing that the Jehova Adonai Kingdon Worldwide were currently subject to a forfeiture claim in the courts. The building also includes three educational uses which are as follows: Allistair Education/Parch Hill; Free2Learn and Somali Parents Initiative.
 3. At the hearing, the appellant confirmed that they wanted to amend the proposal in so far that Zone 2 (Z2) on the first floor plan (previously occupied by Members Church of God International) would only be used for educational purposes. In addition, they also proposed that Zone 4B on the second floor plan (currently occupied by Jehova Adonai Kingdon Worldwide) would be solely
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used for educational purposes. The Council raised no objection to such an amendment and considered that a reduction in the number of churches using the building would likely result in a relative improvement from a residential amenity point of view. For the avoidance of doubt, I have determined the appeal on the basis of these amendments.

4. I have taken the appeal site address from the appellant's appeal form, rather than from the planning application form, as it more precisely refers to the first floor and the second floor of Capital House.
5. Prior to the hearing, the appellant raised concerns about the notification process and in particular doubted whether all relevant parties had received notification of the date, time and venue of the hearing. Following a number of email exchanges between the main parties (including computer screen shots) the Council confirmed that letters/emails had in fact been sent to all those that made representations at planning application stage apart from the occupiers of No 52 Dunkery Road.
6. The Council subsequently contacted the occupier of No 52 Dunkery Road by email on 19 June 2017 (and hand delivered a letter) confirming the date, time and venue of the hearing. I have taken into account the letter of support from the occupier of No 52 Dunkery Road dated 25 October 2015 who commented that the place of worship "*has built his spiritual, moral and social compass*" and that has was taught Maths, English and IT and this "*has helped me with my social skills and interpersonal skills*".
7. Whilst the Council did not notify the occupier of No 52 Dunkery Road within the prescribed period, I have nonetheless taken into account his supportive comments. I have also taken into account all other supportive comments advanced by members of the public and the appellant. In this case, I do not consider that the failure to notify the occupier of No 52 Dunkery Road has resulted in any unfairness in the appeal proceedings. I consider that it is reasonable to conclude that it is very unlikely that the occupier of No 52 Dunkery Road would have raised any new issues over and above those raised by the significant number of people who commented at both planning application and appeal stages. At the hearing, the appellant confirmed that they were now content with the appeal notification process.

Main Issues

8. The main issues are the effect of the proposal upon (i) the living conditions of the occupiers of adjoining and nearby residential properties in respect of noise and disturbance and (ii) on-street car parking provision and vehicular movements.

Reasons

Site and proposal

9. The appeal site comprises part of a ten storey property on the corner of Rosenthal Road and Rushey Green and falls within Catford Town Centre. Rosenthal Road includes mainly dwelling houses whereas Rushey Green includes mainly commercial properties. The application is retrospective and seeks planning permission to use the first and second floors of Capital House (as shown on the submitted plans) for a mixture of places of worship and educational uses falling within use Class D1.

10. Planning permission was approved in 2010 for use of the building for educational uses falling within use Class D1, but this is subject to a planning condition which precludes any other use within Class D1. The ground floor of Capital House, which is not the subject of this appeal, is in use as a car wash (including the sale of tyres) and a gym.
11. The planning application also includes proposed external alterations to the building as outlined in a document referred to as a "Schedule of Improvement Works" and including the repair of broken or missing windows; the fixing of acrylic sheets to windows to be blocked by soundproofing; the reconstruction of brick walls; the installation of gates to the ground floor car park; the installation of signage and line markings to the car and motorcycle spaces.
12. There are on-site car parks at basement (52 spaces) and ground floor levels (about 29 spaces – they are not marked out) and these are used by the occupiers of the first and second floors of Capital House. According to the appellant's Transport Statement, nineteen of the ground floor car parking spaces are shared. I deal with this issue later in the decision.
13. There are four mobility car parking spaces in the basement. Rushey Green is a red route with no car parking permitted and Rosenthal Road is a Controlled Parking Zone which restricts parking to resident permit holders, or pay and display holders, between 09.00-19.00 hrs Monday to Friday.

Living conditions – noise and disturbance

14. I have carefully considered the appellant's noise assessment and do not consider that the results of the surveys indicate that material harm would be caused to the occupiers of neighbouring properties in respect of noise. Some of the windows have already been blocked up thereby ensuring that some noise break out is kept to a minimum when places of worship are in use. However, it was evident as result of discussions at the hearing, and my site visit, that some of the windows were broken. Furthermore, the appellant was unable to confirm whether the acoustic treatment to windows serving parts of the building occupied by churches had been completed in full accordance with details shown on drawing No JS/SP/266/2/07 (Sound Insulation Detail).
15. I have considered the conclusions reached by the Council's Environmental Health Services who considered the appellant's Noise Survey and commented that *"the result shows that the use of the premises is not giving rise to any issues and therefore doesn't require any further mitigation/sound insulation"*.
16. Despite the above, some of the local residents have described past issues relating to noise break out from the building particularly when windows/doors have been left open. However, subject to all specified windows being acoustically treated and then fitted with acrylic sheets, and a more effective management of the building/site, I am satisfied that significant harm would not be caused to the living conditions of the occupiers of surrounding residential properties in terms of noise break out and in terms of the overall character and appearance of the building/area. These are matters that could be addressed by means of the imposition of planning conditions.
17. I acknowledge that in the past windows/doors have been left open, but the appellant confirmed at the hearing that air conditioning units were now available for all church uses in the building, apart from one church. The

appellant's representative indicated that it was the intention to ensure that this church also had air conditioning fitted. This would prevent windows/doors from being opened in hot weather although many windows would not, in any event, be capable of being opened if the sound insulation details (drawing No JS/SP/266/2/07) were implemented in full for the specified elevations.

18. In respect of the provision of air conditioning units, this is a matter that could be addressed by way of the submission of an amended and improved Management Plan. The latter document could be the subject of a planning condition and would seek to incorporate a number of other additional measures as tabled by the appellant at the hearing. This would include better security/management for the car parks; specific times for car parking marshalls; air conditioning units; closing the surface level car park; keeping windows closed; activities within the surface level car park; signage and measures to ensure that all occupiers of the building are fully aware of all planning conditions.
19. In addition to the above, the parties have agreed to the imposition of a planning condition which would mean that no music, amplified sound system or other form of loud noise (such as singing or chanting) is used or generated which is audible outside the premises or within adjoining buildings between 21.00 hrs and 08.00 hrs, and also a planning condition which requires that the operational noise emitted from the site, as measured from the nearest noise sensitive user, is at least 10dB below the existing background noise level at any time.
20. I note that complaints have previously been lodged with the Council's Noise Nuisance team in respect of noise. This has included noise associated with drumming, singing and vehicular/pedestrian comings and goings including the sounding of vehicular horns. Indeed, based on the evidence before me, it is evident that some of this took place as a result of "all night vigils". At the hearing, the appellant accepted that late night vigils had taken place in the past. Whilst the Council's Noise Nuisance team have not previously concluded that there has been any statutory noise nuisance, this does not mean that previous activities have not been audible for nearby residents.
21. Whilst I accept some issues in the past, the imposition of noise and site management conditions, coupled with the proposed noise mitigation measures and hours of use restrictions, would ensure that the building could be used in a manner whereby significant harm was not caused to the occupiers of nearby residential properties in respect of noise. Such planning conditions could be enforced by the Council if not complied with. At the hearing, the appellant was keen to stress that there would be no right of appeal should the Council have to serve any breach of condition notice and that they were determined to ensure full compliance.
22. There is clearly a difference between noise and disturbance. Representations have been made from members of the public to the effect that the proposal has in the past caused problems for nearby residents in terms of pedestrian and vehicular comings and goings, excessive numbers of vehicular movements and late night opening. In particular, such comments have been made by the occupiers of different residential properties on Rosenthal Road.
23. I do not doubt that there have been some issues in the past, but I consider that it is reasonable to take into account the fact that the Council has already

approved planning permission for a D1 use (albeit restricted) in the building and that the site does fall within a mixed commercial/residential area. I noticed on my site visit that background noise levels were fairly typical of a mixed use area and I could hear the sound of traffic from Rushey Green and from machinery being used at the nearby car wash. In other words, it is to be expected that there will be some level of noise and activity associated with use of the building. It would not be unreasonable to expect some level of noise and disturbance in and around the appeal building given its town centre location.

24. I heard comments from the occupier of 9 Rosenthal Road about the close proximity of the surface level car park to her windows and the rear garden. However, the car park is established and hence some activity and noise has to be accepted from this area.
25. Notwithstanding the above, the appeal proposal includes the following measures which would seek to ensure that the site would operate in a manner which would suitably safeguard the living conditions of the occupiers of all surrounding residential properties including No 9 Rosenthal Road.
26. Firstly, it is proposed, unlike in the past when some places of worship were open after 22.00 hrs without the benefit of planning permission, that the building would operate between the hours of 08.00 and 22.00 hrs Monday to Friday; 07.30 and 20.00 hrs on a Saturday and 08.30 and 18.00 hrs on a Sunday. The appellant has also agreed to the imposition of a planning condition relating to delivery hours. On balance, I consider these hours to be reasonable as long as all other suggested planning conditions are complied with.
27. There was discussion at the hearing about the three educational uses in the building and the appellant confirmed that the hours of use for the three educational uses would be more restrictive and as per the existing educational planning permission for the building. I agree that this is necessary given on-street car parking stress on a Sunday and in order to ensure that the living conditions of the occupiers of neighbouring residential properties are reasonably protected in terms of noise and disturbance.
28. Secondly, the appellant has agreed that flat roofs would not be used other than for emergency or maintenance purposes. This would address concerns raised by the occupiers of surrounding residential properties (including No 23 Rosenthal House) about the historic use of at least one roof for BBQs and claims of associated noise and disturbance particularly during the summer period. This was a matter raised by a number of other interested parties at the hearing and the appellant accepted that this had happened in the past. However, I heard from Layo Afuape (Pastor of the Redeemed Christian Church of God – Great Beauty Tabernacle) that alternative arrangements had now been made to have BBQ events away from the appeal site. I have no reason to doubt that this is planned and, in any event, I am satisfied that a planning condition could ensure that this did not happen on flat roofs of the appeal building.
29. Lastly, the appellant has agreed to the imposition of a planning condition which would mean that only the main entrance doors facing Rushey Green, and the door from the basement car park, were used by visitors. The appellant agreed that all other doors, including doors facing Rosenthal Road, would be used

solely for emergency access purposes. This is a matter which could be addressed by planning condition and would help to alleviate some of the past noise and disturbance issues raised by nearby residents on Rosenthal Road including the occupiers of No 2a Rosenthal Road.

30. I recognise that there is some dispute between the appellant and the objectors about levels of noise/disturbance and anti-social behaviour from the site in the past. The appellant accepts that there have been some issues in the past including fly tipping, unauthorised parking in the basement car park and illegal on-site activities associated with drugs and prostitution. However, it is clear from reading the email exchanges between the appellant and the Council/police that measures have been taken to minimise unauthorised parking, anti-social behaviour and to make the site more secure.
31. The proposal has now been amended and now includes fewer churches and more educational uses. In this sense, the appeal proposal would be a different use of the building when compared to the unauthorised use of the building over the last five years. As part of my site visit, I was able to consider the impact of the proposal upon all neighbouring properties and in particular viewed the appeal site from No 9 Rosenthal Road (this immediately abuts the appeal site) and from No 2A Rosenthal Road (this is immediately opposite the appeal building).
32. In respect of No 9 Rosenthal Road, I acknowledge that there are habitable windows on the side/rear elevations of the building and that the rear garden area of this property adjoins the surface level car park and is close to the appeal building. I do not doubt that the occupier of this property has had legitimate cause to make some complaints about the use of Capital House over the years. It was evident as part of my site visit that some windows were broken and the flat roof of the building was close by. Therefore, I do not doubt that there will have been some issues associated with noise and disturbance in the past.
33. Notwithstanding the above, it is clear that the appellant is now proposing a significant number of mitigation measures which would seek to ensure effective management of the car park, restrictive hours of use and to use only the basement car park or the Rushey Green entrance doors for public access purposes. Furthermore, the appellant confirmed at the hearing that Zone 2 on the first floor plan (previously occupied by Members Church of God International) would only be used for educational purposes. Whilst this decision was motivated by car parking requirements, it does nonetheless alleviate some of the concerns raised by the occupiers of 9 Rosenthal Road in terms of the close proximity of churches to this residential property.
34. On the basis of the evidence that is before me, and the suggested planning conditions and measures to mitigate noise/disturbance impacts, I consider that the first and second floors of Capital House could be used for a mixture of places of worship and educational uses without significant harm being caused to the living conditions of the occupiers of surrounding residential properties. For the reasons outlined above, I conclude that subject to strict adherence to a number of planning conditions, the proposal would not have a significantly detrimental impact upon the living conditions of the occupiers of surrounding residential properties in respect of noise and disturbance. Therefore, and in these respects, the proposal would accord with the amenity aims of Policy DM

26 and DM 44 of the Lewisham Local Development Framework Development Management Local Plan 2014 (DMLP) and paragraph 123 of the National Planning Policy Framework.

Car parking and traffic movements

35. Policy 14 of the Lewisham Local Development Framework Core Strategy 2011 (CS) states that a *"managed and restrained approach to car parking provision will be adopted to contribute to the objectives of traffic reduction"* and that the *"car parking standards contained within the London Plan will be used as a basis for assessment"*. There are not any specific car parking standards in place for a D1 use. However, paragraph 6A.1 of the parking addendum to Chapter 6 of the London Plan 2016 (the London Plan) states that *"if there is no standard provided, the level of parking should be determined by the transport assessment undertaken for the proposal, which should be in line with but not limited to the criteria set out in paragraph 39 of the NPPF, the impact on traffic congestion, and the availability of on and off street parking"*.
36. I have no reason to doubt the comments made by the Highway Authority who state that *"the site is noted as having excellent public transport accessibility, being well connected to bus and train services which are within easy walking distance from the site"*. Indeed, the appellant's Transport Statement states that the area has a PTAL rating of 5-6a and there are seven good bus services operating on Rushey Green: the Council do not dispute these findings. Consequently, there are alternative transport opportunities available to the private motor vehicle. There is therefore scope to minimise the use of journeys made to the site by private motor vehicle and to encourage more use of sustainable modes of transport.
37. As this is a retrospective proposal, it has been possible for the appellant to complete car parking surveys (Thursday 28 January 2016 and Sunday 31 January 2016) for both the appeal site and Rothensal Road, as well as to finalise a travel survey of worshippers and pupils. Based on the travel survey (i.e. the number of people arriving at the site by car), this would result in a worst case scenario, on a Sunday, of the occupiers of 107 vehicles arriving at the site requiring car parking spaces. As the site has only approximately 81 car parking spaces (there is a need for some marking out) this would potentially result in an on-site shortfall of about 26 car parking spaces on a Sunday.
38. At the hearing, the appellant was asked if they had exclusive control of all car parking spaces particularly as reference had been made in the Transport Assessment to the sharing of some surface level car parking spaces. The appellant confirmed that reference to "sharing" meant a verbal agreement with the occupiers of the ground floor furniture store and gym to use/share 19 of the 81 car parking spaces. The appellant agreed that as there was no formal agreement in place to secure the permanent use of the 19 car parking spaces, such spaces could be taken away or not be available at any time. The Highway Authority confirmed at the hearing that they had not fully appreciated that reference to "sharing" the 19 car parking spaces meant that appellant had no legal control over such spaces.
39. The main parties (including the Highway Authority) agreed at the hearing that as the amended proposal included two less churches and their replacement with solely educational uses, in quantitative terms the number of car parking

spaces would be acceptable. Taking into account survey data in the appellant's Transport Assessment, I have no reason to disagree with this conclusion. Clearly, the continued use of the shared car park would be advantageous, but given the changes made to the appeal proposal, this would not be a pre-requisite. However, the appellant's representatives confirmed at the hearing that there was no reason why there would be any changes to the current "agreement" to use the shared car park.

40. Rothensal Road is a Controlled Parking Zone, but there are no restrictions in place in terms of free/overspill car parking in the evenings and on Sundays. The surveys revealed that on a Thursday there remained some on-street car parking spaces available on Rothensal Road (at its peak 75% of the spaces were in use). I have no reason to doubt that this was not a typical weekday. On my site visit which took place beyond 19.00 hrs (Tuesday) I did notice some on-street car parking availability. However, the appellant's survey information has revealed that there was significant parking demand and stress between 10.30 hrs and 14.00 hrs on the identified Sunday (up to 114%). Consequently, and without some form of mitigation/control in place, the evidence suggests that the proposal would have a significantly detrimental impact upon on-street car parking on Rosenthal Road at odds with the car parking, sustainable transport and residential amenity aims of Policy DM Policy 44 of the DMLP; Policy 14 of the CS and Policy 6.13 of the London Plan 2016.
41. Notwithstanding the above, the appellant has submitted a Travel Plan which includes a series of measures which would reduce the reliance on the private motor vehicle (including more car sharing) and which would encourage more visitors to use public transport, to cycle (cycle storage facilities are proposed), to walk and to make use of free Sunday public car parks in Catford Town Centre including Holbeach Road car park which is approximately 400 metres away and Thomas Road car park which is about 600 metres away.
42. The Travel Plan highlights that 75% of the people who attend the appeal site live within 10 miles and a further 25% within 2 miles. A Travel Plan Coordinator would be appointed to manage and implement the Travel Plan and public transport information (including cycling and walking route information) would be displayed in the foyer. It is proposed that parking marshals would be utilised to convey information to attendants. At the hearing, it was agreed between the main parties that the Travel Plan could be improved further. I agree that this would be possible and hence a planning condition could be imposed relating to an updated Travel Plan.
43. Subject to the implementation of all of the measures in an updated Travel Plan and achievement of its targets, I am satisfied that the site could operate in a manner whereby it did not result in unacceptable levels of car parking stress on Rosenthal Road. However, this would require the appellant (including the Building Management Company, parking marshals and Travel Plan Coordinator) to both persuade and educate all those that regularly visit the site so that the specified targets could realistically be met.
44. On the evidence that is before me, I am satisfied that it would be possible to reduce the reliance on the private motor vehicle over time and hence on-street parking stress on a Sunday. The appellant confirmed at the hearing that at least three of the churches had a mini-bus and that all would be encouraged to

- have one so that a number of the visitors of the respective churches could be picked up and dropped off.
45. I acknowledge that it would take some time to implement the measures in the Travel Plan and that relieving on-street car parking stress on a Sunday would not happen overnight. However, I do not doubt that significant efforts could be made within a relatively short period of time to ensure that the proposal moves towards an overall neutral impact in terms of its effect upon on-street car parking stress. It would of course be open to the Council to separately consider extending the resident only parking times on Rosenthal Road in the event that future monitoring revealed that there were sustained problems for residents arising out of this proposal or indeed on-street car parking associated with any other use(s) in the locality. That is of course a matter which is always open to the Highway Authority irrespective of the consideration of a planning application.
46. At planning application stage, the Highway Authority raised no objection to the proposal subject to planning conditions relating solely to the implementation of Travel Plan measures and the provision of cycle parking. In respect of the latter issue, I am satisfied that there is enough space within the basement and surface level car parking areas to provide the requisite number of long and short stay cycle storage facilities. This is a matter that could be secured by means of planning condition.
47. Whilst at the hearing the Highway Authority was satisfied with the car parking numbers, taking into account the amended proposal to reduce the number of churches by two, they nonetheless suggested a planning condition requiring that occupancy did not exceed 200 people at any one time. I do not consider that it would be practical to enforce an occupancy condition as the building is used by a number of different and separate users. In any event, this would not be necessary as there would be adequate control in place in terms of confining a planning permission to the church and educational floorspace as now proposed. Furthermore, this is a retrospective proposal and the appellant has been able to gather information relating to occupancy. I do not have any reasonable evidence to suggest that occupancy would change significantly over time and to some extent the room sizes for the respective uses would serve to restrict absolute occupancy.
48. There are currently a number of disabled car parking spaces in the basement car park. However, I was informed at the hearing that whilst there was an access into the building from this area there was no lift to the upper floors. Therefore, it would be necessary to provide at least five disabled car parking spaces within the surface level car park. This may have an impact on overall numbers of car parking spaces, but I do not consider that this would be significant. I am satisfied that this could be addressed by means of the imposition of a planning condition.
49. For the reasons outlined above, I conclude that subject to the implementation of a revised Travel Plan and car parking measures, the provision of cycle parking and forthcoming highway works (i.e. bollards on the pavement) to be carried out by the Highway Authority, the proposal would not have a detrimental impact upon traffic/pedestrian movements or available on-street car parking provision in the locality. Therefore, and in these respects, the proposal would accord with the car parking, traffic management, sustainable

transport and residential amenity aims of Policy DM Policy 44 of the DMLP; Policy 14 of the CS and Policy 6.13 of the London Plan 2016.

Other Matters

50. There is no doubt that this proposal provides a valuable facility from an educational, charitable, counselling and place of worship point of view. The building is already in use for such purposes and hence this suggests to me that there is clearly a need for this type of social infrastructure. In this regard, the proposal accords with Policy 3.16 of the London Plan 2016; the London Social Infrastructure Supplementary Planning Guidance 2016 and Policy DM 44 of the DMLP which states that "*the Council's preferred locations for the development of public places of worship are the network of major and district town centres*". The location of the site and social infrastructure benefits arising from the proposal are matters which weigh in favour of allowing the proposal.
51. I have taken into account the representations made by other interested parties (including supportive comments). Many of the concerns raised by objectors have already been addressed in the reasoning above.
52. Whilst the building may not have been specifically designed/built as a place of worship, I do not consider that this in itself would justify refusal of planning permission. I acknowledge the comments made about the appearance of the building and litter, but the appellant proposes some improvements to the appearance of the building. I do not know if references to litter relate directly to use of Capital House and the evidence provided by Layo Afuape indicates that in the past the site has been the subject of fly tipping. In any event, the Council has separate enforcement powers to deal with litter.
53. The appellant considers that the appeal building (including car park) is now run effectively and that past issues were mainly associated with the Members Church of God International (Zone 2 which had 77 members) who vacated the site in February 2017. There is, however, an acknowledgement by the appellant that there has been late night/early morning use of the building over the last five years. I note that there are no longer signs on the building advertising late night vigils and I have no reason to doubt the appellant's clear intention to ensure full compliance with all planning conditions.
54. Many of the objectors who spoke at the hearing, including the occupiers of 7 Rosenthal Road and 2A Rosenthal Road, questioned whether the appellant/users of the building would in fact be able to ensure full compliance with planning conditions. Such concerns were based on the fact that the building had been in use for more than five years as both a church and an educational facility and that in this time there had been a number of complaints made to the Council and other Authorities. However, a number of the physical mitigation measures would require capital outlay and the appellant confirmed at the hearing that without the certainty of a planning permission it had not been possible to implement all proposals. Furthermore, the appellant was keen to stress that the grant of planning permission, including restrictive planning conditions, would ensure that any breach of planning control could also be referenced in the leases.
55. I acknowledge that there have been some issues in the past, but it is clear that the appellant has made some recent efforts to try to effectively manage the site. With the imposition of a number of robust and necessary planning

conditions, I am satisfied that the building could be used in a manner whereby material harm is not caused from a living conditions or car parking point of view. The appellant is fully aware of the consequences of any breach of planning condition and, despite some issues in the past, I am confident that all planning conditions could be complied with.

56. I have considered the representation made by Heidi Alexander MP which has included representations made by the occupiers of 2a Rosenthal Road and 9 Rosenthal Road and the various associated responses from the Council in terms of noise investigations and highway concerns. I do not doubt that the occupiers of the aforementioned properties have been the subject of some disturbance over the years: indeed very similar concerns have been raised by other residents in the area. However, the site has been used for places of worship for some time without the imposition of any planning controls/conditions. In this case, there are a number of proposed measures which, if implemented properly, would seek to mitigate the substantive concerns raised by those who have objected to the planning application. Hence, the appeal proposal, if implemented in accordance with a number of planning conditions, would not be directly comparable with the historic use of the site.
57. I have viewed the video footage provided by the occupiers of Nos 2a, 9, 11 and 20 Rosenthal Road. This does show that a car associated with the use of the building as a church was parked on the pavement. However, I note that in an email dated 24 March 2017 the Highway Authority indicated that it was their intention to erect bollards in the area. This would stop people from parking on the pavement and also crossing part of the footway to enter the car park. At the hearing, the occupier of No 9 Rosenthal Road confirmed that such works were programmed to commence in the coming days. On the evidence before me, it appears that the Council is intending to deal with any unauthorised or illegal parking on the pavement and, in any event, this is a matter which can be enforced separately. Therefore, I do not consider that it would be reasonable to withhold planning permission on the basis of possible future car parking on the pavement/footway.
58. The aforementioned video footage also shows children playing in the car park (kicking a tin can) and individuals praying in close proximity to parked cars. The video footage does not include audio and so I do not know whether these were very noisy activities. However, and, in any event, it is proposed that there will be restrictions imposed in terms of hours of use of the building and the car park would not be used during the late evening or early hours of the morning. Furthermore, I note that all tenants of the building have signed a behaviour contract with Lewisham Council. The Council would have separate powers available to them to deal with any breach of the contract including any possible anti-social behaviour.
59. Concerns have been made about deliveries, but this is a matter that can be controlled by planning condition. I note concerns raised about parking across drives and on footpaths. I cannot be certain if this relates to visitors of Capital House. However, encouraging car users to either use public transport, cycle or to use public car parks elsewhere in the town centre, in accordance with an approved Travel Plan, would reduce the potential for conflicts.

60. I have considered comments made by the occupier of Flat 3 Rosenthal House and their diary of events in October and November 2016. Some of the alleged late night activity would be eradicated as a result of the imposition of an hours of use planning condition. I do not have any objective evidence to substantiate the claim that the proposed use has resulted in vibrations in the floor of the flat.
61. I note comments made by other interested parties about people living in Capital House. I do not know if this is the case and, in any event, this would be a separate matter to be investigated by the Council's planning enforcement service.
62. I do acknowledge some of the frustrations of the local residents. On the face of it, the building has been allowed to be used without any controls whatsoever for a period of more than five years. It was of course open to the Council to take planning enforcement action at any stage. At the very least, such action could have been taken to ensure that there were suitable controls in place. However, it has been necessary for me to determine this planning application on its individual planning merits and taking into account a number of very specific planning conditions which would need to be adhered to and measures that would be required to be implemented. This represents a very different proposal to the uncontrolled use of the building which has existed for some years. I do not condone the unauthorised use of the building to date, but this in itself is not a reason to withhold planning permission.
63. In reaching my decision, I have taken into account the fact that the proposal involves use of a building for religious worship. I have had regard to Section 149 (the Public Sector Equality Duty) of the Equalities Act 2010 and Articles 9 and 14 of the European Court of Human Rights. My decision would enable visitors of the building to continue to engage in religious worship whilst at the same time imposing a number of necessary planning conditions with the legitimate aim of ensuring that the living conditions of the occupiers of neighbouring properties could be reasonably safeguarded.
64. None of the others matters raised alter my overall conclusions on the main issues.

Conditions

65. The conditions set out in the accompanying schedule are based on those suggested by the Council and subsequently discussed and amended at the hearing. The amended conditions issued by the Council have been agreed by the appellant apart from some suggested minor changes which I shall address below. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance (PPG).
66. The standard three year time limit condition is not necessary as the building is already being used for the proposed uses. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
67. At the hearing, it was agreed that Zone 2 and Zone 4B would be amended so that these areas were used only for educational purposes. Whilst the appellant

has submitted amended plans to show this change (post hearing), the Council's amended suggested conditions relate to the plans submitted at planning application stage. Such plans were the subject of public consultation and I consider that they should be relied upon for the purposes of determining this appeal. Whilst there are some inaccuracies in terms of external doors and the amended uses, this can be suitably addressed by way of additional planning conditions. The imposed approved plans/documents condition therefore continues to refer to the original plans.

68. In the interests of the character and appearance of the area, planning conditions are necessary relating to the details of the acrylic sheets for the windows and implementation of the Schedule of Works to Improve the Building.
69. In the interests of the living conditions of the occupiers of surrounding residential properties, planning conditions are needed in terms of use of flat roofs; delivery hours; prohibiting use of entrance doors other than from the basement car park and from Rushey Green; hours of use and the acoustic treatment of window openings and the existing metal doors facing onto Rosenthal Road.
70. In order to maintain control over uses in the Town Centre, and to protect the living conditions of the occupiers of neighbouring residential properties, there is exceptional justification for removing permitted development rights relating to any other changes of use within use Class D1.
71. In the interests of encouraging use of more sustainable modes of transport, and reducing on-street car parking demand/stress particularly on a Sunday, planning conditions are necessary in respect of cycle parking facilities; the implementation of the measures in an updated Travel Plan and Management Plan and the retention/use of the on-site car parking areas including the provision of 5 disabled parking spaces. I have made a slight change to the Council's suggested Travel Plan condition so that it would allow the appellant the flexibility to provide either a travel information board or a "real-time" electronic information board in Capital House. I consider that this is reasonable as it reflects the proposal in the submitted Travel Plan which was considered by the Highway Authority.
72. In order to ensure that there is adequate on-site car parking, it is necessary to ensure that the space referred to as Zone 2 and zone 4B is only used for educational purposes. The appellant has suggested an additional condition relating to educational uses (condition No 17), but this is not necessary given the imposition of condition No 15 in the schedule of conditions below.

Conclusion

73. For the reasons outlined above, and taking into account all other matters raised, I conclude that subject to the imposition of a number of planning conditions the proposal would accord with the development plan for the area. Therefore, the appeal should be allowed.

Daniel Hartley

INSPECTOR

Schedule of Conditions

(1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: JS/SP/266/2/02-A; JS/SP/266/2/03; JS/SP/266/2/01-B; JS/SP/266/2/07; Schedule of the Works to Improve the Building and Site Location Plan.

(2) (a) Within 3 months of the granting of planning permission, a detailed schedule and specification of the Acrylic sheets or alternative proposed material to be applied to the windows of the building shall be submitted to the local planning authority for approval. (b) The approved material shall be applied in accordance with the approved details within 3 months of approval by the local planning authority and retained in perpetuity thereafter.

(3) (a) A minimum of 17 long stay and 30 short stay cycle parking spaces shall be provided within the development. (b) Within 1 month of the granting of planning permission full details of the cycle parking facilities shall be submitted to the local planning authority for approval. (c) All cycle parking spaces shall be provided and made available for use within 1 month of approval by the local planning authority and retained in perpetuity thereafter.

(4) (a) The development shall operate in accordance with an updated Travel Plan to include the following additional measures to mitigate the impact of overspill parking on-street: the submission of information to encourage the occupiers of the development to use local public car parks in Holbeach Road; the creation of a vehicular lift share scheme and the installation of travel information in the foyer of Capital House. The updated Travel Plan shall be submitted to and approved by the Local Planning Authority within 1 month of the date of this permission and shall thereafter be implemented immediately upon approval by the Local planning Authority. (b) On the first, third and fifth anniversary of the permission, evidence shall be submitted to demonstrate compliance with the monitoring and review mechanisms agreed within the approved Travel Plan.

(5) No flat roof of the building shall be used for any purpose other than emergency and maintenance purposes.

(6) (a) Loading and unloading of goods shall only be carried out within the curtilage of the site. (b) No deliveries shall be taken at or despatched from the site other than between the hours of 8am and 8pm on Mondays to Fridays, 8am and 8pm on Saturdays, or at any time on Sundays or Public Holidays.

(7) The development hereby approved shall only be operated as follows: (i) the Places of Worship shall only operate between the hours of 8am-10pm Monday to Friday, 7.30am to 8pm on Saturdays and 8.30am to 6pm on Sundays; and (ii) the Education uses shall only operate between 8am to 9pm Monday to Friday, 8am to 1pm on Saturdays and not at all on Sundays or Public/Bank Holidays.

(8) No music, amplified sound system or other form of loud noise (such as singing or chanting) shall be used or generated which is audible outside the premises or within adjoining buildings between the hours of 9pm and 8am on any day of the week.

(9) Notwithstanding the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting or modifying that Order), the premises shall be used for places of worship and educational uses and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order).

(10) (a) The development shall operate in accordance with the Noise Impact Assessment and the rating level of the operational noise emitted from the site as measured from the nearest noise sensitive user shall be 10dB below the existing background level at any time. (b) Within 3 months of the granting of planning permission, the soundproofing treatment shown on plan no JS/SP/266/2/07 hereby approved shall be installed in all windows on the north, east and south elevations of the first and second floors of the building shown as Zones 1, 1A, 3, 3A, 3B, 4, 4A, 4D and 4E on drawings JS/SP/226/2/02-A and JS/SP/226/2/03. This treatment shall be maintained in perpetuity. For the avoidance of doubt, the sound proofing treatment need not be applied to the windows of offices, toilets, kitchens, storage areas, circulation spaces, ancillary meeting rooms, children's rooms and administrative areas.

(11) The measures set out in the Schedule of the Works to Improve the Building hereby approved shall be implemented within 3 months of planning permission being granted. The works shall be maintained in perpetuity.

(12) Other than in the case of emergency, access to and egress from the development hereby approved shall be taken only from the main entrance into Capital House from Rushey Green or directly from the basement. For the avoidance of doubt, no access or egress is permitted via the staircase located within the undercroft parking area at the rear of the building.

(13) (a) The whole of the car parking area (with the exception of the shared parking area) shown on drawing No JS/SP/266/2/01 - B hereby approved shall be provided and retained permanently for the accommodation of vehicles of the occupiers of the development (including employees using the building and persons calling at the building for the purposes of conducting business with the occupiers thereof). (b) Notwithstanding the approved plans, within 3 months of the granting of planning permission 5 disabled parking spaces shall be provided at ground floor level and retained permanently for the accommodation of vehicles of the occupiers of the development. (c) The disabled parking spaces shall be 2.4m wide by 4.8m long with a zone 1.2m wide provided between designated spaces and at the rear outside the traffic zone. Evidence of compliance shall be submitted to the local planning authority within 3 months of the date of this planning permission.

(14) Within 6 weeks of planning permission being granted, a management plan for the operation of the development shall be submitted to the local authority for approval. The management plan shall include: contact details for the building management and a procedure for handling complaints; measures to ensure that the surface level car park is closed and vehicles cannot enter or exit after 10.30pm; measures to ensure that traffic marshals are on site and effectively managing access to the site, parking of vehicles and drop-off/pick-up between 2pm-10.30pm on Fridays and 7.30am to 6.30pm on Sundays; measures to ensure that in respect of all place of worship uses all associated external windows on the

first and second floors of the building are kept closed except in cases of emergency or for maintenance (i.e. maintenance to take place only when church services are not taking place); measures to ensure that air-conditioning is provided to all areas of worship (Zones 1, 1A, 3, 3A, 3B, 4, 4A, 4D and 4E on drawings JS/SP/226/2/02-A and JS/SP/226/2/03); measures to restrict activities in the surface level car park which could give rise to disturbance to neighbouring occupiers; and measures to ensure that all occupiers of the development are made aware of and comply with the other conditions of this planning permission, particularly in respect of hours of occupation and access. The approved management plan shall be implemented in full and within 4 months of the date of this permission. The approved measures/works in management plan shall be permanently implemented/retained.

(15) Notwithstanding the approved plans, the areas outlined in blue on drawings JS/SP/226/2/02-A and JS/SP/226/2/03 (labelled Zone 2 (Z2) and Zone 4B) shall be used only for Educational use and for no other use falling within Use Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.

(16) The existing metal fire exit doors on the Rosenthal Road frontage shall be fitted with a scheme of noise suppression the details of which shall be submitted to the local planning authority within one month of the grant of planning permission. The approved scheme shall be implemented within one month of approval by the local planning authority and retained thereafter.

APPEARANCES

FOR THE APPELLANT:

Mr John Dagg - Barrister, MRTPI

Mr Alan Wipperman - Planning Agent, MRICS, MRTPI

Dr Kyriakos Papanagiotou - KP Acoustics, B.Eng, MSc, PhD, MIOA

Mr Shahid Hanif

Mr Robert Macleod

FOR THE COUNCIL:

Suzanne White - Senior Planning Officer, Lewisham Council

Geoff Whittington - Senior Planning Officer, Lewisham Council

Catherine Patterson, Transport Policy and Development, Lewisham Council

INTERESTED PERSONS:

Layo Afuape

Vivien Burnett

Christine Carnell

Don Carnell

Zoe Hamman

Natalie Bailey-Williams

Vanessa Onobrara

Kehinde Afuape-Baloguin

Michael Afuape

John Oredeko

Mr Andrew Lambert

Edward Cook

Leonardo Derto

Chinyere Shantel Okeke

DOCUMENTS SUBMITTED AT THE HEARING

Document 1: Appellant's list of current occupiers of Capital House and updated basement/ ground floor (Drawing No JS/SP/266/2/01-A), first floor (Drawing No JS/SP/266/2/02-A and second floor (Drawing No JS/SP/266/2/03) plans.

Document 2: Existing ground/basement floor plan (Drawing No JS/SP/266/2/-1-B) – considered by the Council as part of the determination of the planning application.

Document 3: Extract from the adopted London Plan Social Infrastructure Supplementary Planning Guidance 2016

Document 4: List of names of the principal appearances for the appellant