



Appeal Decision

Site visit made on 25 July 2017

by Nigel Burrows BA MRTPI

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

Decision date: 25 August 2017

Appeal Ref: APP/Z5060/C/16/3159358

Land and premises at the rear of 246 Oxlow Lane, Dagenham, RM10 7YX

- 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 Israel Ajayi against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice, ref: 14/00056/NOPERM, was issued on 24 August 2016.
- The breach of planning control as alleged in the notice is the material change of use to a place of worship/community centre.
- The requirements of the notice are:
 1. Cease the use of the premises as a place of worship/community centre
 2. Remove all fixtures and fittings that facilitate the unauthorised use
 3. Remove all waste materials from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections

Procedural Matters

1. The appellant indicates there is an error in the enforcement notice, as part of it appears to identify the address of the site incorrectly. The appellant does not elaborate further. The address given in paragraph 2 of the notice ('THE LAND TO WHICH THE NOTICE RELATES') is '*Land and premises at the rear of 246 Oxlow Lane*' - which is correct. I have therefore assumed the appellant is drawing attention to a notation on the plan attached to the enforcement notice which refers to '*246 Oxlow Lane...*' which is incorrect.
2. However, the plan appears to correctly identify the land and premises subject of the enforcement notice in red, notwithstanding the defective notation. This defect does not go to the heart of the notice. It can be corrected by simply deleting the notation upon the plan. This correction would not cause injustice to the appellant, who appears to be in no doubt about the extent of the land and premises subject of the notice.
3. Having said that, the whole of the site edged red does not appear to be used as a place of worship/community centre as alleged in the enforcement notice. The Council's stance is that a material change of use from Class B1 to D1 has occurred.¹ This certainly appears to be the case within the single storey range and the first floor of the attached two storey range. However, there is no firm evidence to show that a change of use has taken place within the ground floor portion of the two storey range. This matter was also highlighted by my colleague who quashed a previous enforcement notice which purported to relate to the site. Amongst other things, he concluded: "*It should be alleged that the*

¹ As alleged in paragraph 6.2 of the Council's statement of case

premises is in a mixed use for business and as a place of worship and community centre, even if there would be no requirement for the business use to cease. " ²

4. On the evidence before me, I see no reason to disagree with my colleague's conclusion. I intend to correct the allegation in the notice along these lines. I am satisfied this correction would not cause injustice to the parties. There is no need to correct the requirements of the notice, which only appear to be concerned with the worship/community centre activities.

The appeal on ground (a) and deemed application

5. The ground (a) appeal and the deemed application are for the matters alleged in the notice, as corrected, namely *'The material change of use from B1 business purposes to a mixed use for B1 business purposes and as a place of worship/community centre.'*
6. I consider there are three main issues in this case. The first is whether the provision of the place of worship/community centre would be an appropriate form of development within this location, having regard to the relevant development plan policies and other material considerations. The second is the effect of the use on the prevailing highway conditions in the area. The third is the implications of the use for the living conditions of residents in the vicinity of the site, particularly in terms of noise and disturbance.

Issue 1: The appropriateness of the development

7. The appeal premises are located to the rear of a parade of properties used for a mix of commercial/residential purposes, which are situated on the south side of Oxlow Lane in Dagenham. There is no dispute that the premises are within a Neighbourhood Centre for the purposes of policy CM5 'Town Centre Hierarchy' of the Council's Core Strategy. ³
8. Policy CM5 seeks to encourage development and services that will help to maintain and enhance the vitality and viability of designated centres. The Council also cites Planning Advice Note 4 - 'Religious Meeting Places' (2012 update). Paragraph 1.2 of the document indicates it should be read in conjunction with the Council's planning policies. However, it is not altogether clear whether it has the status of a Supplementary Planning Document (SPD), which limits the weight I can give to it. Be that as it may, section 4 of the document offers guidance on the preferred locations for religious meeting places.
9. The Council's stance is the development has deprived the area of light industrial capacity. However, the retention of this industrial capacity does not appear to be a stated objective of policy CM5. In any event, the Council considers the use harms the vitality and viability of a designated centre due to a reduction in employment generating floorspace and by being inactive throughout much of the week. This appears to be a reference to the appellant's limited use of the premises. According to the appellant, the current use normally involves prayer/bible study between 19:00 and 21:00 hours on Thursdays and congregational worship on Sunday afternoons until about 15:00 hours.
10. The Council argues there would be at least 2 full-time employees on this site in B1 use,⁴ whereas the unauthorised use has no full-time employees. However, I do not consider that such a conclusion could be safely drawn, notwithstanding the limited duration of the use on the site. However, I agree with the Council's view that the current use of the premises as a place of worship/community centre does not appear to represent an efficient use of the premises. In this respect, it is difficult to see how it helps to maintain or enhance the vitality and viability of the Oxlow Lane Neighbourhood Centre. It also conflicts with Core Strategy policy CM1, insofar as it seeks to ensure that development uses land and infrastructure efficiently, maximising the use of previously developed land.
11. The appellant is evidently willing to explore a more intensive use of the premises, including coffee mornings, afternoon tea drop-in sessions, and other activities supporting

² Paragraph 5 of appeal decision ref: APP/Z5060/C/14/2225858, dated 5 August 2015

³ 'Planning for the future of Barking and Dagenham': Cores Strategy (adopted July 2010)

⁴ Based on the Homes and Communities Agency Employment Densities Guide (2010)

the local community. However, there is no firm evidence before me to demonstrate the extent to which these activities might help to maintain or enhance the vitality and viability of the Neighbourhood Centre. The suggestion of a more intensive use would also tend to undermine one of the appellant's principal arguments in favour of the unauthorised use - namely that it involves a very limited use of the appeal premises.⁵

12. The Council considers the use does not provide wider community centre functions or services. Section 4 of the Council's Planning Advice Note indicates that applicants should demonstrate that their religious meeting place is meeting a predominantly local need: speculative applications where this cannot be established or verified will be discouraged. According to the appellant, there is 'a very great need' for the use and it benefits the community. However, no information has been provided in support of these assertions, or in relation to the size of the congregation and what proportion of its members might be local.
13. The appellant cites other considerations in favour of the use. The appellant suggests the current use of the property is more appropriate to this location and more 'considerate' to local residents than the former use of the premises as a vehicle repair workshop; it also involves the beneficial use of a building which was in a poor state of repair. However, on the first point there is no compelling evidence to support these assertions; furthermore, I intend to address the implications of the use for local residents within the third issue. On the second point, this use does not appear to represent an efficient use of the premises.
14. As matters stand, I conclude there is no compelling evidence to demonstrate the unauthorised use helps to maintain and enhance the vitality and viability of the Neighbourhood Centre. In this respect, it conflicts with Core Strategy policy CM5. Furthermore, it conflicts with policy CM1 for the reasons given above in paragraph 10.

Issue 2: Highway Conditions

15. According to the Council, the unauthorised use has resulted in inconsiderate car parking which causes obstruction of the public highway, to the detriment of road safety. This allegation is strongly contested by the appellant. He indicates there has been no parking on the public highway by users of the premises. The appellant confirms that he uses a car, but indicates only one member of the congregation generally visits the premises by car, plus one other visitor who occasionally uses a car.
16. At the site visit there appeared to be a vehicle obstructing the main access to the site from Oxlow Lane. However, there was no evidence to suggest this was associated with the place of worship/community centre. I also noted there were a number of vehicles parked on the forecourt of other premises within the parade, which gave rise to a rather confused and cluttered appearance to the frontage of properties in Oxlow Lane.
17. In any event, there is no substantive evidence before me to support the Council's assertion that the use has resulted in inconsiderate car parking, or that it detracts from the prevailing highway conditions. Moreover, given the limited parking space available within the site and the duration of the activities which take place, it is highly likely that additional car-borne visitors would use the allocated on-street parking provision within the area or, alternatively, use the Wantz car park which is a short distance to the east.
18. Overall, I conclude the use is unlikely to have an adverse impact upon the prevailing highway conditions within the area. I further conclude that it does not materially conflict with policies BR9 and BR10 of the Council's Borough Wide Development Policies,⁶ insofar as they seek to manage parking provision and address the highways impact of development.

Issue 3: Living Conditions of Residents

19. The Council alleges the unauthorised use has resulted in a significant adverse effect on residential amenity due to noise, parking and general disturbance. According to the

⁵ Which has implications for the matters to be addressed in the second and third main issues

⁶ Borough Wide Development Policies Development Plan Document (March 2011)

Council, six noise complaints have been received in relation to the site between March 2014 and October 2014. However, details of these complaints have not been provided.

20. As noted earlier, the appellant claims the current use of the property is more 'considerate' to local residents than the former use of the premises as a vehicle repair workshop. However, it is by no means obvious that this is the case. For example, according to the Council, there is no record of noise complaints concerning the use of the premises from 2008 until the commencement of the current unauthorised use.
21. The appellant has emphasised the limited nature of the use undertaken at the premises. Furthermore, my attention has been drawn to various noise attenuation measures which have been carried out including the provision of sound proofing to the building, the permanent sealing of windows facing the properties in Oxlow Lane and the provision of air conditioning to provide alternative ventilation to this accommodation.
22. However, it is by no means obvious to me that such measures would go far enough to mitigate potential noise and disturbance. For example, the congregation of people outside such premises can often be a significant problem in terms of noise and general disturbance. I could not discount the possibility this might be the case here.
23. A troubling aspect of this case is that the parties have not provided any Noise Impact Assessment to underpin their respective arguments. It might conceivably be the case that the appellant's sound attenuation measures have adequately mitigated any noise from the place of worship/community centre; however, the congregation of people outside might remain a concern. In any event, in the absence of any compelling evidence one way or the other, I am unable to reach a firm conclusion on the matter.⁷

Summary

24. I have found in the appellant's favour on the second issue. I am unable to reach a firm conclusion upon the third issue. Nonetheless, overall, I find these considerations are clearly outweighed by my conclusion that there is no compelling evidence to demonstrate the unauthorised use helps to maintain and enhance the vitality and viability of the Neighbourhood Centre, as required by the relevant planning policies.
25. It is not obvious to me that the objections to the use could be overcome by planning conditions. I note the appellant's willingness to accept a 'personal' condition. However, planning controls are normally concerned with the use of land rather than the identity of the user. Planning permission normally runs with the land and, as such, it is seldom desirable to provide otherwise. In any event, I am not persuaded that such a condition would overcome the objections to the development that I have identified - or justify the grant of permission for the continuation of the use. Given my overall findings on the main issues, I conclude that the ground (a) appeal and deemed application should not succeed.
26. I have taken into account all the other matters raised, including the appellant's concerns about the manner in which the Council has dealt with the enforcement proceedings and the difficulties likely to be experienced in the search for suitable alternative accommodation,⁸ but I find they do not alter or outweigh the main considerations that have led to my decision.

Formal Decision

27. The enforcement notice is corrected by :-

- (i) Deleting all the words from paragraph 3 (THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL) and replacing with the following words: *The material change of use from B1 business purposes to a mixed use for B1 business purposes and as a place of worship/community centre.*

⁷ In other respects, given my conclusions on the second issue, there is no firm evidence to show the amenity of the area would be significantly affected due to parking

⁸ Albeit, should any unforeseen circumstances occur, then section 173A(1)(b) of the Act enables the Council to extend the period for compliance with the enforcement notice at its discretion.

(ii) Substituting the attached plan for the plan originally attached to the notice.

28. Subject to the above corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nigel Burrows

INSPECTOR



Plan

This is the plan referred to in my decision dated: 25 August 2017

by Nigel Burrows BA MRTPI

Land and premises at the rear of 246 Oxlow Lane, Dagenham, RM10 7YX

Reference: APP/Z5060/C/16/3159358

Scale: NTS

