
Appeal Decision

Site visit made on 13 August 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2019

Appeal Ref: APP/W4223/W/19/3228956

2nd Floor, Broseley House, 81 Union Street, Oldham OL1 1PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Miss Ronke Joseph on behalf of The Storehouse Church against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/342804/19, dated 12 December 2018, was approved on 28 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is Change of use of the third floor from office (Class B1) to place of worship use (Class D1).
 - The condition in dispute is No 3 which states that: The proposed development shall not be brought into use unless and until a pedestrian guardrail has been provided on Union Street which will prevent users of the development from converging on the Metrolink track. Details of the pedestrian guardrail shall first be submitted to and approved in writing by the Local Planning Authority. Such works that form the approved scheme shall be retained thereafter.
 - The reason given for the condition is: in the interest of highway safety.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In the planning permission, the Council refers to the premises as the third floor of Broseley House. Since the building only has 3 floors, the normal way of describing the address would be 2nd floor. The appellant uses the term 2nd floor in the appeal form and I have proceeded on the basis that the approved development relates to the 2nd floor of the building.

Main Issue

3. The Framework requires planning conditions to be kept to a minimum and only applied where they satisfy the six tests of necessity; relevance to planning; relevance to the development permitted; enforceability; precision; and being reasonable in other respects. The planning condition forming the subject of the appeal is demonstrably relevant to planning and to the development, precise in its wording and enforceable.
4. In light of the remaining tests of necessity and reasonableness the main issue is whether the provision of a safety barrier is necessary in the interests of highway safety, having regard to the location of the property adjacent to a tram line and station, and whether it is reasonable in all other respects.

Reasons

5. The approved use for Class D1, non-residential institution in connection with worship, would occupy the second floor of Broseley House (the premises) which is located within the town centre of Oldham. The premises are currently vacant, the existing use being as offices, Class B1.
6. By reason of planning condition no 3, the approved use cannot commence until a pedestrian safety barrier is installed within the pavement to the front of the building, the details of which are to be approved by the Council.
7. The building of which the premises form a part are located adjacent to the Metrolink line and station. The appellant does not argue that the provision of such a barrier is unnecessary but suggests that this should only be triggered when and if the size of the congregation reaches a certain number. It is not apparent to me whether the reasons for suggesting this approach are based on the number of people coming and going from the premises and issues with pedestrian safety, or the point at which the membership of the church is such that the cost of the barrier can be afforded, or some combination of both.
8. On my site visit, I observed a number of Metrolink trams approaching and stopping at the station beside the premises. The trams sound a warning bell, and slow on the approach to the station. However, given the width of the footway to the front of the premises, there is still a risk that a congregation of the maximum size envisaged, many of whom would arrive and leave the premises at a similar time, or other passing pedestrians, could stray into the running track if a barrier is not provided.
9. I therefore find that the planning condition passes the test of necessity.
10. The guard rail would be situated within the public highway, however the cost of installing the barrier would be borne by the appellant, a registered charity. In terms of reasonableness, I am sympathetic to the appellant's argument that at the present time the membership of the church is insufficient to afford the cost of installing the barrier. In effect, it is suggested that the planning condition is not reasonable, and a requirement that the barrier must be installed upon membership of the church reaching a number where the cost could be afforded would be more practical.
11. However, the appellant does not provide me with an indication as to what this number would be, and the Council does not support the idea of an 'alternative trigger'. I have no evidence before me on what an appropriate trigger point would be, were I to be minded to support the compromise suggested by the appellant.
12. The Planning Practice Guidance advises that planning conditions which place unjustifiable and disproportionate financial burdens on the applicant will fail the tests of reasonableness¹. I am therefore mindful of the appellant's case in relation to the cost of the barrier and the intended function of the church. However, these points must be weighed against the interests of highway safety, and on balance I give the greatest weight to ensuring the safety of pedestrians in the vicinity of the premises at the times when comings and goings from the church would be highest.

¹ Planning Practice Guidance paragraph 005 Reference ID:21a-005-20190723

13. I therefore find that the condition passes the test of reasonableness.

Conclusion

14. The removal of condition 3 would allow the approved use to commence without the provision of a pedestrian barrier. Whilst initially the church use may not give rise to levels of activity greater than would be the case under the current B1 use, as the congregation size grows there will be an increasing risk of pedestrians coming into conflict with the trams entering the station, to a point where a barrier would be necessary.
15. I therefore conclude that condition 3 is necessary and reasonable in the interests of highway safety, in compliance with Policies 5 and 9 of the Oldham Local Development Framework Development Plan Document – Joint Core Strategy and Development Management Policies (2011) which require that, amongst other things, development ensures the safety of pedestrians and does not harm the safety of road users, and the Framework which seeks to ensure that development which causes unacceptable impacts on highway safety is prevented.
16. I have had regard to all the other considerations put forward by the appellant, including the social and community functions which the church would perform, and the employment which would be created. However, none of these either individually or collectively, outweigh the harm that I have identified in terms of risk to highway safety.
17. For this reason, I conclude that the appeal should be dismissed.

Tim Wheeler

INSPECTOR