



Appeal Decision

Site visit made on 21 October 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/A5840/C/19/3222547

**Celestial Church of Christ Amazing Grace Parish, Ground Floor,
33 Sternhall Lane, London SE15 4NT**

- 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 Mrs Elizabeth Akinsanya against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 14 January 2019.
 - The breach of planning control as alleged in the notice is failure to comply with condition No 2 of a planning permission Ref 06/AP/0359 granted on 20 April 2006.
 - The development to which the permission relates is the change of use of ground floor from light industrial/offices (Class B1) to provide educational and training facility (Class D1). The condition states that:
The use hereby permitted for the educational and training facility (Class D1) shall not be carried on outside of the hours 9am to 5.30pm on Monday to Friday.
 - The notice alleges that the condition has not been complied with in that there has been unauthorised use of the premises by the carrying out of activities and operations outside of the permitted hours.
 - The requirements of the notice are
 - i) *Cease the use of the premises at weekends and outside of the hours between 09.00 to 17.30 Monday to Friday;*
 - ii) *Cease the use of and remove from the premises all forms of amplification including microphones and speakers;*
 - iii) *Cease the use of and remove from the premises all musical instruments.*
 - The period for compliance with the requirements is:
 - *In respect of requirement i) Six months after this notice takes effect;*
 - *In respect of all other requirement 28 days after this notice takes effect.*
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f).
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Decision

1. It is directed that the enforcement notice is varied at section 5:
 - By the deletion of steps ii) and iii) andat section 6:
 - the deletion of period for compliance set out in paragraph 6.2.
2. Subject to the variations, the enforcement notice is upheld.

Ground (a) appeal and the Deemed Planning Application

Preliminary matters

3. Following my site visit, the Council requested that I give consideration to a

different plan to that attached to the enforcement notice. The Council suggest that the original plan did not include the rear courtyard of the premises. However, the plan originally submitted and attached to the notice did include the rear courtyard but was just at a smaller scale. I can see no reason to make any corrections to the notice as the plan adequately indicates the location of the appeal site. I had been using a different, clearer map that was also provided within the appeal submissions to write notes on which may have resulted in the confusion but that plan was not part of the notice.

4. Planning permission was given for the change of use of the current appeal site for an educational and training facility which falls within Class D1 of the Use Classes Order¹ (ref 06-AP-0359 – the planning permission). The current use as a place of worship falls within the same use class and did not therefore require planning permission although by reason of the disputed condition, there is control over the hours that the use operates. There is no dispute between the parties that these hours have been breached.
5. Under this ground of appeal, planning permission is sought for the development as originally approved without compliance with condition 2. Alternative conditions have been suggested by the appellants and I will return to those below. The planning permission was subject to other conditions but it is not open to me to formally review the ongoing appropriateness of any of the other conditions. However, it is clear that when this use was originally approved it was seen as necessary to control not only the hours but also the number of students within the premises in order to protect the amenity of surrounding residents.

Main issue

6. Guidance on planning conditions is contained within paragraph 55 of the National Planning Policy Framework (the Framework). This states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The main issue in this case is whether the current hours restriction is necessary and reasonable in the interests of the living conditions of nearby residential properties.

Reasons

7. The appeal site includes former industrial premises which are located between residential properties close to a busy commercial part of Peckham. The site is accessed by vehicles and pedestrians from the corner where McDermott Road and Sternhall Avenue join. There is a short driveway leading from the road in front of the site. The building is only accessed through a metal roller-shutter door at the front of an 'under croft' which goes beneath the living accommodation and rear workshop/studio within No 1A McDermott Road.
8. The site is therefore in a back-land position largely surrounded by residential properties. There are dwellings within the buildings at the Cooper Works to the south and a multi-storey block of dwellings to the north. The under-croft area, the church building and rear yard with a small temple within it are however positioned very intimately with the living accommodation and a workshop and studio located at first floor level at No 1A. The roller-shutter door and the

¹ The Town and Country Planning (Use Classes) Order 1987, as amended

- under-croft are immediately below the living and sleeping accommodation of No 1A. Due to the way the buildings have been constructed, they also share party walls.
9. The appellant has provided a Noise Impact Assessment (NIA). This confirms that noise from loudest periods within the building at neighbouring properties exceeds all guidance levels. A large degree of sound leakage seems to be from the roof and windows along the south façade of the building. There may be some improvements that could be made to the building to help limit some of that noise breakout as well as technical solution such as sound limiters on amplified equipment. The NIA suggests that with these changes, the church can operate with a low impact on neighbours in terms of limiting noise from services within the building.
 10. There would still be some impact however even with these mitigation measures in place. Sound breakout may be limited. Some of these measures would require significant physical changes such as internal insulation, a secondary ceiling and the creation of a lobby to replace existing industrial roller shutter door that is directly underneath the flat at No 1A. The full details of these measures are not provided and whether they would achieve the aims is in my view uncertain. The significance of sound transference to the residential accommodation at No 1A has not been fully considered nor whether this could be successfully overcome. I am not persuaded that such matters could be addressed successfully if I were to impose an alternative planning condition to require the submission of further details.
 11. If the hours were to be extended and physical measure could overcome sound breakout, I would also remain concerned that extending the hours of use could lead to attendees of events causing a disturbance in particular to the dwelling at No 1A. Removing the roller-shutter door for a door with a quieter mechanism would have a beneficial effect. However, the mingling of people outside directly below the first-floor windows of the dwelling could continue to cause disturbance and that could not be adequately controlled through the suggested 'Noise Management Plan'. Student numbers are controlled by the other planning condition but there is no suggestion that this could not control numbers of worshippers or attendees of other events. On the other hand, this is an accessible urban area and the evidence submitted does not lead me to be concerned that parking within adjoining roads would add significantly to disturbance for residents where there are existing parking restrictions.
 12. On the basis of the information provided, I do not consider that extending the hours as suggested would adequately prevent disturbance and noise pollution for nearby residents. I understand that it is very difficult for the church to adequately operate within the current restricted hours particularly at weekends. However, the property has a very close physical association in particular with the dwelling above the entrance and the under-croft.
 13. In relation to the main issue, based on the submitted evidence, the current hours restriction is necessary and reasonable in the interests of the living conditions of nearby residential properties. Relaxing the restriction would not comply with Southwark Plan 2007 Policy 3.2, Southwark Core Strategy adopted April 2011 Policy SP13 or the London Plan adopted March 2016, Policy 7.15.

Other matters

14. The church clearly provides wider social benefits including working with young people, elderly people and different segments of the church. The Framework requires the provision of social, recreational and cultural facilities and services for community needs.
15. I have had due regard to my duties under the Equality Act 2010 and the Public Sector Equality Duty. A church group such as this has relevant protected characteristics under this legislation. I do not consider however that, even taking these statutory duties into account, that there would be public benefits sufficient to outweigh the harm that I have identified in relation to the main issue.

Conclusion on ground (a)

16. For the reasons given above and having regard to other matters raised, the appeal on ground (a) and the application for deemed planning permission fail.

The Appeal on ground (f)

17. The notice has clearly been issued in order to remedy the breach of planning control by making the development comply with the terms of the planning permission. The appeal on this ground is therefore that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve that purpose.
18. The breach of planning control is a breach of the planning condition relating to hours. The notice does not allege that the use or presence of sound amplification equipment, including microphones, speakers or musical instruments is a breach of the enforced condition or any other planning condition. As such requirements ii) and iii) clearly go beyond what is necessary to remedy the breach of planning control.
19. As such, the appeal on ground (f) succeeds and I will vary the notice to remove those excessive requirements.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A Harwood

INSPECTOR