



Appeal Decision

Site visit made on 10 December 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

Appeal Ref: APP/G5750/C/19/3224264

Building rear of 174 Balaam Street, Plaistow, London E13 8RD

- 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 Shahid Hanif against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 18/00744/ENFC, was issued on 8 February 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use to a place of worship.
 - The requirements of the notice are:
 1. Cease the use of the property as a place of worship.
 2. Remove from the property all fixtures and fittings that solely facilitate the use as a place of worship.
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.
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Decision

1. It is directed that the enforcement notice is corrected by substituting 'supported living accommodation' with 'place of worship' in the fourth reason for issuing the notice. Subject to the correction, 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.

Preliminary Matters

2. The Council has referred to policies in the Draft London Plan in the Enforcement Notice. Having regard to the advice in paragraph 48 of the National Planning Policy Framework, I am not aware of the extent of unresolved objections to the relevant policies and therefore I give them limited weight. Moreover, the policies are not determinative.
3. Planning permission has previously been refused to use the building as a place of worship¹.

¹ Ref 18/03250/COU

The Notice

4. The Council has advised there is a typographical error in the fourth reason for issuing the notice where it refers to 'supported living accommodation'. This should be corrected to 'place of worship'. This correction would not be prejudicial to the appellant.

The appeal on Ground (a) and the deemed application

5. The ground of appeal is that planning permission should be granted.

Main Issues

6. The main issues are:
 - Whether the site is a suitable location for a place of worship, having regard to the spatial strategy;
 - Whether the development is of a suitable design for a place of worship;
 - The effect of the use on the living conditions of neighbouring residents by reason of noise and disturbance;
 - Whether the proposal makes adequate provision for car parking, disabled parking and cycle parking.

Suitable location

7. The site is a building that was a function room to the rear of a former public house on the road frontage of the site. The former public house is now in use as a restaurant with a residential use on the first floor. The previously ancillary function room is now in separate use as a place of worship.
8. Policy INF8 of the Newham Local Plan 2018 (LP) seeks to prioritise sites in town and local centres for the development of community facilities, including places of worship, but allows exceptions to this, where specific criteria are met. One such exception is where a facility meets a localised need, is smaller than 75 square metres, with staff and facility users not exceeding 15 people at any one time. The policy goes on to state that in order to demonstrate a local need, proposals should be accompanied by evidence, including that at least 67% of users will be ordinarily Newham residents and that existing facilities cannot meet the identified need.
9. The appellant states that the facility needs to be located close to the people it serves, and that it is close to the centre of Plaistow and the station. However, the site is not within an identified town or local centre, and no evidence of the number of users or the proportion who are Newham residents has been provided. Moreover, it has not been shown that the floor area of the building is less than 75 square metres.
10. The appellant states that rent and rate costs can make it difficult to find suitable premises, and that the use as a place of worship brings benefits that are welcomed and provide support to the community. However, it has not been demonstrated that there is a localised need for the use, that could not be met by an existing community facility.
11. I therefore conclude that it has not been demonstrated that the site is not a suitable location for a place of worship, having regard to the spatial strategy. It

would therefore be in conflict with LP policies INF8, S1, S6, SP1, SP2, SP3, SP6, INF2 and INF5, and Policies 4.7, 6.3, 6.13, 7.1 and 7.4 of the London Plan 2016 (the London Plan) insofar as they seek to locate new community development to ensure focused, vibrant, accessible and multi-functional town and local centres with a sustainable pattern of movement.

Design

12. The building is situated to the rear of the main restaurant building at the front of the site, and is accessed through an alleyway to the side of the restaurant. LP Policy INF8 requires that community facilities should be outward looking, address the street and neighbourhood in their design so that they are obvious and welcoming within the urban grain, subject to design and character considerations.
13. The entrance to the building is set back from the road behind a gate, screened from the adjacent public park and Balaam Street by a wall and the main building. As a result, it does not have a noticeable presence on the street frontage and is not readily apparent to passers-by.
14. The development is therefore not outward looking, nor is it obvious and welcoming in the urban grain. While there may be ways to overcome these shortcomings, I have no details before me as to how such improvements could be achieved or whether they would be acceptable. They are therefore not matters that could be dealt with by a condition if I were minded to allow the appeal. As a result, I find that the development is not of a suitable design for a place of worship. It is therefore in conflict with LP policies S6, SP1, SP3 and INF8, and London Plan policies 7.1, 7.2 and 7.4 which seek, amongst other things, that new development has a high quality of urban design that provides legible streets, inclusive and welcoming community facilities.

Parking

15. Balaam Street is a minor road that had limited traffic at the time of my visit, which was midday on a week day. The road in the vicinity of the site has double yellow lines on both sides, although the restrictions only apply between 8.00am and 6.30pm Monday to Saturday. I saw little evidence of on street parking. I appreciate that this is only a snapshot in time and it would be reasonable to assume that traffic levels would be higher at peak times, and that on street parking levels would be evident outside the restricted hours.
16. The site has a PTAL² rating of 5, which indicates good transport links. There is an underground station within walking distance at Plaistow, and Balaam Street is a bus route, with bus stops nearby. The Council has not provided details of the level of car parking provision that it considers to be necessary, but in view of its proximity to public transport routes it would be reasonable to assume that parking provision could be reduced. I appreciate that on street parking is likely to take place at unrestricted times, and that this may impede visibility for pedestrians crossing the road. However, there is no firm evidence that the level of parking demand generated by the development is at such a level that it cannot be safely accommodated through on street parking on nearby roads. Nonetheless, disabled parking and cycle parking should be provided in the interests of inclusivity and to reduce car dependence.

² Public transport accessibility

17. The officer report for the previously refused application indicates that two parking spaces could be provided, situated on the access to the building. However, these spaces would be in a tandem arrangement and would not be independently accessible. Therefore, this part of the site would provide only one parking space and it is not clear whether it would be suitable for disabled parking.
18. The appellant refers to the potential to provide disabled parking and cycle parking on land to the rear of the building. If adequate information were available to demonstrate that the land is within the appellant's control and is capable of providing sufficient parking, this may be a matter that could be dealt with by condition. However, in the absence of such information, I conclude that it has not been demonstrated that the development can provide adequate disabled and cycle parking. It is thus in conflict with LP policies SP2, SP3 and INF2, and London Plan policies 6.4, 6.9, 6.10 or 6.13, insofar as they seek to ensure development facilitates inclusive access and promotes cycling. However, I do not see any conflict with regard to the provision of other parking spaces.

Noise and disturbance

19. The site is to the rear of a restaurant, and adjacent to a number of flats at Darwin Court to one side, and a park to the other side. There is a residential use on the upper floors of the restaurant building. To the rear is an area of open land. The flats at Darwin Court are in two blocks, each having three storeys, with a courtyard between them. The appeal site is roughly level with the courtyard. The surrounding area is predominantly residential, but there is a mix of other uses, including commercial and community uses. The area is therefore relatively busy with moderate levels of background noise from traffic and other activities.
20. It would be reasonable to assume that the use of the building as a place of worship has changed its pattern of use, compared with its previous ancillary use. It is also likely that the use as a place of worship generates some noise and activity. However, I have seen no firm evidence that the use as a place of worship causes excessive noise and disturbance to neighbouring residents. The appellant argues that its previous ancillary use was controlled by a licence which allowed late opening hours and therefore could have caused a greater level of noise and disturbance to neighbouring residents. Moreover, details of sound proofing of the building could be required by a condition, if I were minded to allow the appeal.
21. As a result, I do not find that the use is harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. Accordingly, it is not in conflict with LP policies SP2, SP3 and SP8 or 7.15 of the Local Plan, insofar as they seek to minimise the environmental impact of development and ensure that it is neighbourly and avoids unacceptable exposure to noise and disturbance.

Conclusion on Ground (a)

22. Although I have found in favour of the appellant in relation to the fourth main issue, this does not override the harm that arises from the other main issues and the conflict with the development plan, read as a whole. I therefore conclude that the appeal on ground (a) fails, the appeal is dismissed and planning permission for the application deemed to have been made is refused.

Ground (f) appeal

23. This ground of appeal is that the steps for compliance with the notice are excessive. The appellant argues that conditions in relation to the use of the premises, improvements to the access, parking, the times of operation and the noise levels could be imposed and the use could continue. I have considered the imposition of conditions in relation to the appeal under ground (a).
24. Since the notice requires the use to cease, the purpose of the notice is clearly to remedy the breach. No lesser steps than complete cessation of the use would achieve that purpose, and the requirements of the notice cannot, therefore, be said to be excessive.
25. The appeal on ground (f) fails.

N Thomas

INSPECTOR