



Appeal Decision

Site Visit made on 23 October 2020

by Mr Andrew McGlone BSc(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/N2345/W/20/3256841
38 Carlton Drive, Preston, PR1 4PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ahmed Khazi of The Boulevard Community against the decision of Preston City Council.
 - The application Ref 06/2020/0494, dated 20 May 2020, was refused by notice dated 15 July 2020.
 - The application sought planning permission for change of use of ground floor from retail (Class A1) and first floor residential (Class C3) to community use prayer facility (Class D1) without complying with conditions attached to planning permission Ref 06/2018/0293, dated 30 November 2018.
 - The conditions in dispute are Nos 2, 3 and 6 which state that:
 - *Condition 2: "The use now authorised shall, unless the permission is renewed, be discontinued at the expiration of 12 months from the date of this permission."*
 - *Condition 3: "The use hereby approved shall not be open outside the following times: Monday-Sunday 07:00-22:00."*
 - *Condition 6: "The total number of users of the prayer facility hereby approved shall not exceed eight at any one time."*
 - The reasons given for the conditions are:
 - *Condition 2: "To enable the Local Planning Authority to review the matter in the light of experience of the effect of the use of the locality in accordance with Policy AD1(a) of the Adopted Preston Local Plan 2012-26 (Site Allocations and Development Management Policies) and the National Planning Policy Framework."*
 - *Condition 3: "To ensure that residents of nearby dwellings are not adversely affected by the development in accordance with Policy AD1(a) of the Adopted Preston Local Plan 2012-26 (Site Allocations and Development Management Policies) and the National Planning Policy Framework."*
 - *Condition 6: "To safeguard the amenities of the residents of the nearby residential properties in accordance with Policies AD1(a) and EN9 of the Adopted Preston Local Plan 2012-26 (Site Allocations and Development Management Policies) and the guidelines of the Central Lancashire Supplementary Planning Document 5: Design Guide and the Residential Extensions and Alterations Supplementary Planning Document."*
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Decision

1. The appeal is allowed and the planning permission Ref: 06/2020/0494 for the change of use of ground floor from retail (Class A1) and first floor residential (Class C3) to community use prayer facility (Class D1) without complying with conditions attached to planning permission Ref 06/2018/0293 at 38 Carlton Drive, Preston, PR1 4PP granted on 30 November 2018 by Preston City Council, is varied by deleting condition No 2 and subject to the conditions in the attached schedule.

Background and Main Issue

2. Condition no. 2 was imposed by the Council to review whether the use was acceptable in this location. The condition allowed the use to operate until 30 November 2019. Despite this, the use has continued, and the appellant has sought permanent planning permission and proposes changes to the hours and number of users. The Council are not concerned about the continued use of the property as a community prayer facility. I have no reason to disagree based on the use granted by the Council. Thus, and due to the dispute around condition Nos 3 and 6, the main issue is the effect that varying the opening hours and the maximum number of users of the prayer facility would have on the living conditions of neighbouring residents, with regards to noise and disturbance.

Reasons

3. The application site is a semi-detached property located near to the junction of Carlton Drive and Boulevard, within a residential area. The other half of the semi-detached pairing has window openings at ground and first floor close to the common boundary and the entrance to the prayer facility.
4. It is unclear whether the previous convenience store/newsagent operated within restricted opening hours but interested parties' testimonies strike me as typical of how the use operated and the likely use of it.
5. An area of hardstanding lies in front of the property. This facilitates off-street parking for a handful of vehicles. On-street parking is available on Carlton Drive and Boulevard, though parking restrictions prevent on-street parking around the junction of these roads and in front of the appeal site during the hours of 08:00 and 19:00 Monday to Saturday. The frequency of driveways serving residential properties nearby inhibits the potential amount of on-street parking, while the available provision appears to generally well used.
6. The existing facility serves the local community who attend daily prayers which take place at times determined by the position of the Sun in the sky. Usually they last no more than 15 minutes each. Planning conditions covering internal noise insulation and an Occupancy and Amenity Management Plan (OAMP) have been discharged by the Council. These seek to ensure that the use does not adversely affect residents living conditions. Measures such as the keeping of a register, allowing only local membership, monitoring entering and exiting the building and providing a complaints procedure are included in the OAMP.
7. Noise can have significant effects on the environment and on quality of life. The sole material before me assessing the noise implications of the proposed changes is a document which seeks to respond to concerns raised by the Council on 6 April 2020. It confirms that recorded external noise levels are considerably lower during the late evening and through to the following morning. This is to be expected for a residential area, and this trend is not

likely to have changed since the noise measurements were taken, although the readings are not completely reliable due to their age.

8. Acoustic treatment may have been carried out to the party wall to address internal noise, but no details of the approved scheme are before me. Soft floor coverings are used inside the property and users take their shoes off before entering, but I cannot be certain in the absence of precise details that the existing measures would be capable of mitigating internal noise from the number of users now proposed which would be a considerable increase within an enclosed space. I note the delay that prevented attenuation measurements being carried out, but adequate time has now passed to allow this to take place. As such, the evidence before me does not demonstrate that no adverse impact would be caused to neighbouring residents.
9. A cleaning operative could visit the property and clean between the prayer times and within the hours previously granted given the length of each of the daily prayers. This would avoid any potential noise and disturbance effects, whether they be internal or external, on neighbouring residents.
10. The submitted Prayer Log shows that persons typically use the facility for prayers after the morning prayer, with the number of users increasing during the day. The exception is weekend days when the facility was used more widely during the afternoon and evening periods. The Log indicates that most people tend to walk to the facility and not drive. However, this Log only covers one week so it is a snapshot into the facility's use, but there are times when the level of use is under or over that consented.
11. Even if existing users travel on foot and additional users do the same, this practice cannot be controlled through a planning condition. It can only be actively promoted as outlined in paragraph 102 of the National Planning Policy Framework (the Framework). I saw a nearby bus stop but bus services may not be available during the extended hours now proposed. Cycle parking provision is on the site, but some residents' submissions indicate a far higher level of vehicle movements is occurring. Others corroborate the appellant's stance. In either scenario, an isolated weekly log does not on its own demonstrate a 'typical' pattern of use or travel.
12. That said, in any event, it would be highly unlikely that the same levels of travel on foot would take place during early morning and late evening hours, especially during the winter and during periods of inclement weather given that they are far less appealing despite best endeavours. Thus, the use of vehicles is likely to be greater as a result of the proposed hours and number of users.
13. Noise from passing vehicles would not be disruptive to residents across the day. The appellant suggests that the use of the car park is restricted, but in tandem with the local parking restrictions this would only displace or add to the displacement of vehicles onto nearby roads across a wider area near to residents' homes. I agree with the Highway Authority that there would not be any highway safety issues. Hence, the proposal would accord with Policy ST1 of the Preston Local Plan (Local Plan). However, people could park vehicles next to the site at the start and end of the day and on Sundays without breaching the parking restriction. These times correlate with quieter times of day.
14. Either way, the noise pattern associated with the proposed use would not be akin to movements relating to the property's occupation as a dwelling as they

- would be concentrated and regular. They would also differ from the previous use as people do not arrive and depart at set times of the day and in unison.
15. The noise evidence before me includes measurements on car movements of a car park. It does not assess the parking of vehicles in the manner that would occur as a result of the proposal. The noise levels set out are also averages which do not reflect higher noise readings which are likely to arise in the short passages of time that traffic related noise would occur over. Furthermore, the increased number of users would increase the potential for conversations to occur and for voices to be heard by residents. The appellant's evidence shows that noise from conversations would be above the levels recommended by the World Health Organisation at night.
 16. External noise from the use of the facility during the early morning and late evening hours would occur when residents are likely to be sleeping or resting. These are sensitive periods when residents would be more aware of noise and disturbance relating to comings and goings to and from the facility. During the extended hours now proposed there would be significant potential for voices and conversations to be heard by residents closest to the facility as the entrance and parking area would act as a focal point for users to interact even for short periods of time. Anecdotal evidence from interested parties suggests that conversations are already heard, and the appellant's evidence does little to counter this or demonstrate that it would not be the case for a larger number of users across an extended operating period. Current social distancing measures do not change my view about this harmful effect which could disturb residents sleep given that many dwellings have front bedrooms. A planning condition controlling the number of people entering and leaving the facility at any one time would not in practice be enforceable or necessary as it could just mean that persons stop and talk on the forecourt or on the highway.
 17. During the existing consented hours, the potential additional number of persons able to use the prayer facility may not, on its own, result in adverse impact on the living conditions of residents from conversations taking place. However, it would, in tandem with noise and disturbance from vehicle movements still cause a deliberating effect as the proposed changes would enable the use to operate seven days a week with five daily prayers.
 18. The seasonal approach to the facility's use proposed would see a minor reduction to the morning hours during the winter. However, this would not mitigate for the increased noise and disturbance that would arise with the increased number of people. The extended hours during the months of March to August inclusive would not be acceptable for the reasons that I have set out.
 19. A proposed new version of the OAMP is not before me. Given the lack of substantive details of the measures that could potentially form part of that revised document before me, I am not certain that a planning condition would overcome the harm that I have identified arising from the changes.
 20. The area surrounding the Bence Road prayer facility differs considerably from the appeal site's surroundings in terms of nearby uses, traffic and general activity. While the Bence Road facility may operate without causing harm, it is not a directly comparable example that justifies the appeal scheme. Furthermore, the scheme at Harrow Road in Wembley does not justify a scheme that could be used five times a day with regular comings and goings even if they are of a lower number to the Harrow Road scheme which was

approved solely for use twice daily.

21. Although there may well be other uses found within residential areas that operate at various times of the day and have comings and goings, there is no substantive evidence before me about the sites referred to, the circumstances relating to any planning decisions, how they operate or their potential effect on the surrounding area. It could also be the case that certain uses are historic, within local service centres or on busy main roads.
22. The provision of cultural facilities within the local community attracts support from Framework paragraph 92. However, this must also be weighed against its impact on the local community. In this case, despite the proposal according with Local Plan Policy ST1 in respect of car parking provision, I conclude that varying the opening hours and the maximum number of users of the prayer facility would have a significant adverse impact on the living conditions of neighbouring residents, with regards to noise and disturbance. The proposal would conflict with Local Plan Policy AD1(a) which seeks development within an existing residential area not to have an adverse impact on residential amenity, particularly by reason of noise and general disturbance due to the activity itself or the vehicular movement it generates. Thus, this harm outweighs the benefits associated with an extended operation and increased use of the existing facility. Condition Nos 3 and 6 remain necessary and satisfy the other tests set out in Framework paragraph 55.

Other Matters

23. I have had regard to the appellant's concerns about the Council's handling of the planning application. However, the Council have engaged with the appellant over several planning applications spanning numerous years and has made its position known to the appellant. This matter does not alter or outweigh my findings on the proposal before me, which I have considered on its merits.

Conclusion and conditions

24. The Guidance is clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I shall impose all those that I consider remain relevant, having regard to the suggested planning conditions provided by the Council.
25. Due to my findings on the main issue, I have imposed a condition to limit the number of occupants and the times at which the use can take place within. Both are necessary in the interests of residents living conditions. A plans condition is necessary to provide certainty. I have imposed conditions to ensure the schemes approved by the Council in respect of noise insulation and the OAMP are implemented and continue to be adhered to in the interests of the living conditions of residents. For the same reasons, I have imposed conditions about lighting, amplified music, speech and the use of loudspeakers. I have amended the suggested condition about the use to reflect the changes to the use classes order and imposed it on this basis given the site's location.
26. For the reasons given above I conclude that the appeal should partly succeed. I will grant a new planning permission without condition No 2 and restating the remaining conditions that are still subsisting and capable of taking effect.

Andrew McGlone

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; and Proposed Floor Plans.
- 2) The use hereby approved shall not be open outside the following times: Monday-Sunday 07:00-22:00.
- 3) There shall be no amplified music or speech or use of loudspeakers at the premises.
- 4) Within three months of the date of this decision, the scheme of noise insulation between the site and adjoining residential property, as contained within the Noise Insulation Report (prepared by AB Acoustics, dated 28th December 2018), as approved under discharge of condition application Ref: 06/2019/0251, shall be implemented and thereafter retained in perpetuity.
- 5) The total number of users of the prayer facility hereby approved shall not exceed eight at any one time.
- 6) The development hereby approved shall operate in accordance with the revised Occupancy and Amenity Management Plan (OAMP) (received by the Local Planning Authority on 21st May 2019), as approved under discharge of condition application Ref: 06/2019/0251, and shall continue to do so in perpetuity.
- 7) The premises shall be used as a prayer facility only, and for no other purpose, including any other purpose in Class F1(f) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or any other provision equivalent to that class in any statutory instrument revoking and re-enacting that order. The provision of teaching, the holding of ceremonies and events shall not be held at the premises.
- 8) All lighting luminaries shall be so placed and angled so as not to cause light nuisance to nearby dwellings.

END OF SCHEDULE