



Appeal Decision

Site visit made on 17 November 2020

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2021

Appeal Ref: APP/R3515/W/20/3257627

5 Woodbridge Road, Ipswich, Suffolk IP4 2EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ali Omar, Nawracy Cultural Centre against the decision of Ipswich Borough Council.
 - The application Ref IP/20/00112/VC, dated 6 February 2020, was refused by notice dated 5 June 2020.
 - The application sought planning permission for Change of use from public house (A4) to place of worship and community centre (D1/D2) without complying with a condition attached to planning permission Ref IP/19/00101/FUL, dated 7 March 2019.
 - The condition in dispute is No 7 which states that: The hereby-approved development shall not be in use outside the hours of 10am to 10pm daily.
 - The reason given for the condition is: To ensure that the proposal remains compatible with surrounding uses in the interests of amenity.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use from public house to place of worship and community centre at 5 Woodbridge Road, Ipswich, Suffolk IP4 2EA in accordance with the application Ref IP/20/00112/VC dated 6 February 2020, without compliance with condition number 7 previously imposed on planning permission Ref IP/19/00101/FUL dated 7 March 2019 and subject to the conditions set out in the schedule attached to this decision.

Procedural Matter

2. Since the Council's decision the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 has come into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Order). These Regulations amend and simplify the system of Use Classes. Amongst other matters, Class A and Class D have been revoked. A new Class F which consists of 'Learning and non-residential institutions' (F1) and 'Local community' (F2) has been introduced. The Council has made reference to the new Class F in its suggested conditions which the appellant has had the opportunity to comment on. I therefore consider that no party will be prejudiced by my removal of reference to the defunct classes in my description of development allowed above and to the use of the new classes in the imposed conditions.

Background and Main Issue

3. The Nawracy Cultural Centre is using the appeal building as a place of worship (mosque). The appellant wishes to extend the hours of use of the premises from those originally imposed to 24 hours a day, seven days a week. This is in order to accommodate the five daily prayers of Islam which are performed throughout the day, last no longer than 15 mins and take place at times dictated by the position of the sun in the sky as well as the times of sunrise and sunset.
4. The main issue is the effect that removing the condition would have on the living conditions of the occupiers of nearby residential properties, having regard to noise and disturbance.

Reasons

5. The appeal site is occupied by a former public house building, which is currently in use as a place of worship and community centre. The site is bounded by the Manor Social Club and commercial office premises to the west, a private car park on Cobbald Street to the rear of the site. There are residential properties to the north east on Cobbald Street and opposite along St Margaret's Street. The site fronts the busy junction of Woodbridge Road and St. Margaret's Street. There is a 24 hour public pay and display car park to the eastern boundary which shares its northern boundary with residential properties on Cobbald Street.
6. The appellant's evidence includes a professional technical Acoustic Report (AR). It demonstrates that traffic noise is the dominant noise source in the area throughout the day and night and that the activities associated with the proposal would not exceed the current noise levels. The AR considered the car parking noise within the confines of the site, associated with the comings and goings of the congregation and indoor prayer noise levels of Friday prayers, which are acknowledged to generate the most noise as they are led by an Imam using a public announcement system.
7. In relation to nearby residential properties the survey considered the worst-case scenario by not making allowance for any attenuation that would be provided by the walls and roof of the structure that covers the site's parking area or by the eastern boundary fencing. The findings of the AR include noise levels throughout the night, during the times when the Council is concerned that background noise levels are lower than during the day. The Council's Environmental Protection Officer has no objection to the proposal subject to the imposition of a condition to ensure noise emanating from the site would not exceed specified levels. A condition in respect of this could be imposed in the event that the appeal is allowed.
8. I acknowledge the Council's and resident's concerns regarding the potential for noise from people congregating and chatting outside and the revving of car engines and doors slamming and that these matters would be difficult to control by the site's management. I also acknowledge that these concerns relate mainly to the use of the adjacent public car park by those attending the site. I accept that it is probable that most visitors would rely on private cars as it may not be attractive to walk after dark and I have no evidence of any regular, through the night, public transport availability. As motor vehicle parking within the appeal site is restricted by condition to operational purposes,

- powered two wheeled vehicles and 'blue badge scheme' holders' vehicles only, those visitors arriving by private car are most likely to park in the adjacent public car park.
9. Adoption of a 'management plan' was suggested by the author of the AR to reflect the appellant's stated desire to be 'good neighbours'. This plan would include, amongst other matters, instructions from the management team for doors and windows at the centre to be kept shut at night, to ask the congregation to leave quietly and for no conversation to be held in the car park at night and to park close to Woodbridge Road, away from houses, when parking in the adjacent car park. Whilst these measures would be good practice, I do not consider that the plan could be made the subject of a condition. This is because it would seek to control matters outside the confines of the appeal site and would therefore be unenforceable.
 10. Nevertheless, given that the daily prayers last for no longer than 15 minutes, it seems unlikely to me that people would make lengthy journeys to attend for this limited time. This short time frame would also be likely to limit the overall attendance figures. Whilst an analysis of demographic data of current users has not been provided, I have no reason to believe that the anticipated level of demand for the evening, sunset and sunrise prayers is unrealistic or to conclude that large numbers of worshippers would be drawn to attend. I have no substantive evidence that those attending for prayer would be prone to causing significant noise outside the confines of the site boundaries, such that would be harmful to neighbours.
 11. The Planning Practice Guidance¹ (PPG) sets out that conditions can be used to grant planning permission for a temporary period where circumstances may be appropriate, including where a trial run is needed in order to assess the effect of the development on the area. There is no substantive evidence to demonstrate that noise levels outside of the site generated by users of the mosque would be harmful. Whilst I am satisfied that the AR demonstrates that noise from within the site would meet World Health Organisation guidelines for night time noise at the nearest receptor, and therefore provides some comfort that similar activities within the adjacent public car park would result in similar levels of noise, I accept that the AR does not provide definitive evidence in this respect.
 12. As there is an element of uncertainty regarding noise to be generated from visitors to the site using the public car park, in coming to my conclusion, I consider it would be reasonable and necessary that the proposal is for a temporary basis to be assessed over a limited time for a 12 month period. I note that this has been suggested by the Council and that the appellant has indicated that they agree to this.
 13. For the reasons given above, I conclude that the proposed change in hours of use for the premises as a place of worship would not result in significant harm to the living conditions of nearby residents. As a result, there would be no conflict with Policy DM26 of the Ipswich Borough Council Local Plan Core Strategy and Policies Development Plan Document Review 2017 which seeks to ensure development will not cause nuisance to adjacent residents.

¹ Paragraph: 014 Reference ID: 21a-014-20140306 Revision date: 06 03 2014

Other Matters

14. Whilst the appeal building is not a designated heritage asset, there is a grade II listed Milestone located at the front of the building. In addition, the site is adjacent to, but not within, the Ipswich Central Conservation Area. There is no suggestion that the proposal would have any effect on the significance of these designated heritage assets. I have no reason to disagree.
15. Local residents have argued that extending the hours of use would result in the site no longer being a community centre as it would primarily be a mosque. However, the permission allows for both uses and this matter does not therefore alter my conclusion.
16. Concern has been raised that conditions imposed in relation to the use of the western access and to hours of use are currently being breached. However, this is a matter for the Council and is outside the remit of this appeal. In any case, the Council has stated that it has not received any formal complaints and the Highway Authority have raised no objection to the proposal.
17. Further concern has been raised that having more people about in the early hours would result in increased security risk to nearby offices. However, in my opinion, increased activity at the site would be more likely to result in increased natural surveillance of the area and therefore an associated increase in the security of nearby property.

Conditions

18. The conditions on the original planning permission have been considered in light of the advice contained in the PPG. The PPG makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should also restate the relevant conditions from the original planning permission.
19. In the interests of the living conditions of nearby occupiers, I have replaced, for the reasons set out above, the disputed condition with one that limits the use of the revised opening hours to use for daily prayer(s) between the specified times and to a 12 month period. The Council's suggested wording of this condition would not be precise and enforceable, I have therefore amended this as necessary to comply with the 6 tests². I have not found it necessary to make the consent personal to the Nawracy Cultural Centre. This is because it is not who occupies the site, but rather it is the use of the building for which planning permission is required.
20. Similarly, in the interests of living conditions of nearby occupiers, conditions are necessary to ensure control over the level of noise emanating from the site and to ensure that the use of the building remains within that permitted, being a community centre and place of worship, within Use Classes F1 and F2, notwithstanding the provisions of the Order (as amended, or any subsequent re-enactment with or without modification).
21. In the interest of highway safety and to minimise impacts on traffic capacity and air quality, conditions are re-imposed for the provision of cycle parking, use of the west access, including a scheme for on-site signage, opening of the site's gates and restrictions on users of the on-site parking provision.

² PPG - Paragraph: 003 Reference ID: 21a-003-20190723 Revision date: 23 07 2019

22. In the case of conditions 2 and 4, I have re-imposed the original conditions rather than imposing the Council's suggested amended conditions. In doing so I am mindful that the appellant may already be in breach of these conditions. However, as stated earlier in my decision, such matters are for the Council to deal with. It is not for me to resolve in the determination of this appeal.

Conclusion

23. For the reasons above the appeal is allowed.

S Tudhope

Inspector

Schedule of Conditions

- 1) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any Order revoking and re-enacting that Order with or without modification) the premises shall be used as a place of worship within Use Class F1 and or as a community centre within Use Class F2 and for no other purpose within those Classes.
- 2) Before the hereby approved development is first brought into use details of cycle parking shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle parking shall be provided on first use of the development and retained thereafter.
- 3) The St. Margaret's Street (west) access shall only be used by vehicles entering the site and for access by pedestrians and cyclists with no vehicular egress onto St. Margaret's Street.
- 4) Before the hereby approved development is first brought into use an access management scheme, including signage, shall be submitted to and approved in writing by the Local Planning Authority. The signage shall clearly show vehicle drivers that no exit shall be made from the site in St Margaret's Street. The approved scheme shall be implemented on first use with the signage erected and thereafter maintained.
- 5) The gates on the St Margaret's Street (west) access shall be kept open while the site is in use unless otherwise agreed by the Local Planning Authority under Condition 4 above.
- 6) Motor vehicle parking on the site shall be limited to operational purposes, powered two wheeled vehicles and Blue Badge Scheme (or any successor permit scheme for people with severe mobility problems) holders' vehicles only.
- 7) The premises shall not be in use outside 0700 hours to 2300 hours daily, other than for daily prayer(s) which shall be permitted between the hours of 2300 and 0700 for a limited period of one calendar year from the date of this decision. From the first day following the end of the limited period the hours of use shall revert to 0700 hours to 2300 hours daily.
- 8) Noise emanating from the site must not exceed the following levels 1m from the façade of any noise sensitive receptor: 2300 hours to 0100 hours 45dB LAeq 15 mins; 0100 hours to 0400 hours 38 dB LAeq 15 mins; 0400 hours to 0700 hours 45dB LAeq 15 mins.

End of Schedule