
Appeal Decision

Site visit made on 13 April 2021

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 10 May 2021

Appeal Ref: APP/P3040/W/20/3262617

173 Loughborough Road, West Bridgford, Nottingham NG2 7JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Fazilat Foundation UK against Rushcliffe Borough Council.
 - The application Ref 20/01817/FUL, is dated 24 July 2020.
 - The development proposed is the Change of Use from Dental Surgery (Use Class D1) to a Place of Worship (Use Class D1).
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Decision

1. The appeal is allowed and planning permission is granted for the Change of Use from Dental Surgery (Use Class D1) to a Place of Worship (Use Class D1) at 173 Loughborough Road, West Bridgford, Nottingham NG2 7JS in accordance with the terms of the application, Ref 20/01817/FUL, dated 24 July 2020, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Fazilat Foundation UK against Rushcliffe Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. The appellant indicates that the relevant planning application was validated by the Council on 27 August 2020 with the target date for determination being 22 October 2020. The appellant also suggests that no extension of time for determination was requested by the Council.
4. The appeal form is dated 5 November 2020. On 12 November 2020 the application was considered by the Council. Planning permission was resolved to be refused on the grounds that the proposal provided inadequate parking and that the proposed operating hours were unsociable and therefore would cause noise and disturbance to residents early in the morning and late at night.
5. Although the Council formally considered the planning application this appears to have been after the appeal was submitted against a failure to give notice within the prescribed period of the decision on the application. The Council's statement accepts that the appeal is in respect of the failure to determine the application within the prescribed period. Consequently, I have determined the appeal on this basis.

6. A dental surgery and a place of worship fall within the same use class (D1). However, the Council indicates that a condition was imposed on the planning permission (Ref 02/01580/COU), granted in 2003, for the conversion of the appeal property into a dental surgery. This condition restricted the permission to the use of the property as a dental surgery only and no other use falling within Class D1 of the Town and Country Planning (Use Classes) Order 1987. Consequently, the appeal proposal constitutes a change of use that requires planning permission.

Main Issues

7. The main issues are:

- The effect of the proposal on the living conditions of the occupants of nearby properties with particular regard to noise and disturbance.
- The effect of the proposal on the safe and efficient operation of the highway network in the vicinity of the appeal site

Reasons

The appeal site and its surroundings

8. The appeal property occupies a relatively large corner plot on the junction of Loughborough Road with Chaworth Road. The property was originally constructed as a dormer bungalow and still maintains a residential appearance within the street scene.
9. Loughborough Road is one of the main vehicular routes into and out of Nottingham and is subject to a high number of vehicular movements. The surrounding area on Loughborough Road is characterised by residential and commercial properties although Chaworth Road and Northwold Avenue, located to the west and on the opposite side of Loughborough Road respectively, are predominantly residential in character.
10. To the south east of the site is a single storey residential property at No 173a Loughborough Road. The side elevation of this property is positioned relatively close to the property boundary with the appeal site and is separated from it by a substantial close boarded fence. The neighbouring property to the north east, on Chaworth Road, is a dormer bungalow which the appellant indicates has planning permission to redevelop the site to erect a three-storey building comprising five apartments (Ref 18/00019/FUL).
11. Within close proximity of the appeal site are two bus stops which the appellant indicates provide access both inbound and outbound of Nottingham City Centre and West Bridgford. A designated cycle route runs along Chaworth Road and signage indicates that this provides access to West Bridgford Town Centre.
12. A 24 hour ASDA superstore and filling station are located to the south. The appellant indicates that this is located approximately 200m from the appeal site.

Living conditions

13. The proposal would not involve any external physical alterations to the building. Internal alterations would be undertaken to facilitate its use as a mosque.

14. The proposed car parking layout includes the retention of 6 existing spaces accessed off Chaworth Road and a further 8 spaces accessed off Loughborough Road. The submitted plans also indicate that 2 undercover cycle stands would also be provided.
15. The appellant indicates that up to 14 worshippers only would use the facility at any one time. Weekday prayer services would occur up to 5 times per day for periods of approximately 15 to 30 minutes during sunrise, lunchtime, late afternoon, evening and sunset. On Fridays there would be a 45 minutes prayer between 13.45 hours and 14.00 hours. Evening prayer during Ramadan would take place for 90 minutes and on two other occasions during the year (Eid) 90 minutes prayer would be undertaken.
16. The appellant also indicates that there would be no audible call to prayer; no audio equipment attached to the building; no weddings or funeral ceremonies; and that prayers would be conducted in the spoken word with no communal singing.
17. The existing building is of relatively modern construction and I have no substantive evidence to suggest that the proposed use in which prayer would occur within the confines of the building would cause unacceptable levels of external noise to be generated. In any event, the Council has suggested that a planning condition could be imposed requiring the submission of a Noise Management Plan which could assist in providing appropriate noise mitigation, acoustic attenuation and the control of activities associated with the use of the building.
18. However, the use of the car park and the associated coming and goings of vehicles, particularly late at night and early morning, has the potential to generate noise and disturbance. In considering this aspect of the proposal I am mindful that this part of Loughborough Road is well trafficked and serves a 24 hour superstore. It is therefore reasonable to assume that there is already some background vehicle noise occurring at unsociable hours.
19. The appeal site is well located in terms of access by means other than the car in being close to the public transport network, cycle routes and adjacent to a pedestrian road crossing. In this regard, given the location of the appeal site, it is also reasonable to assume that some of those attending prayer would access the site by other means than the car.
20. In addition, the limited size of the building restricts the number of persons it can accommodate for prayer with space for up to 14 people. The appellant indicates that research has been carried out at 17 similar places of worship in Nottingham to determine the number of attendees praying at sunrise. This research suggests that attendance at the sunrise and sunset prayers is small as many people conduct their prayers at home due to a need to balance family life. I have no evidence to suggest that the appellants research may be incorrect.
21. The location of the appeal site, its accessibility to travel other than means of a car, its limited size for persons to pray, that the number of persons attending sunrise and sunset prayers is likely to be reduced and the fact that the time of sunrise and sunset varies throughout the year are all factors that I have taken into account. Whilst the proposal has the potential to cause some limited noise and disturbance, primarily associated with the comings and goings of vehicles

at sunrise and sunset, I do not consider that this would be of an extent to warrant the dismissal of this appeal on those grounds.

22. I have also taken into account the Council's suggestion that a planning condition should be imposed, were I minded to allow this appeal, that would prevent the use of the facility between the hours of 23.00 and 07.00. However, given my findings above, I do not consider such condition to be necessary. Furthermore, I recognise that it would be both unusual and unreasonable to place restrictions on the time periods that worship can occur, particularly as this faith requires sunrise and sunset prayer.
23. Taking the above factors into account I do not consider that the proposal would unacceptably harm the living conditions of the occupants of nearby properties in respect of noise and disturbance. Consequently, there would be no conflict with Policy 10(2)(b) of the Rushcliffe Local Plan Part 1: Core Strategy (CS) and Policy 1(1) of the Rushcliffe Local Plan Part 2: Land and Planning Policies (LPP). These policies, amongst other things, require that proposals should consider the impact on the amenity of occupiers or nearby residents and that changes of use should ensure that there is no significant adverse effect on amenity by reason of the type and levels of activity on the site or traffic generated.

Highway safety

24. Notwithstanding the fact that the appeal site is reasonably accessible by means other than the car, the proposal provides for 14 car parking spaces located within the site. I note that Nottinghamshire County Council, in its capacity as highway authority, consider that the proposal would not result in severe impact to the safe operation of the highway network.
25. Swept path analysis demonstrates that there is sufficient manoeuvrability space around the car parking spaces accessed off Loughborough Road to enable vehicles to exit in forward gear. No concerns have been drawn to my attention by the Council regarding the access arrangements to and from Loughborough Road which I consider provides adequate vehicle and pedestrian intervisibility.
26. Although the highway authority indicates that the parking arrangements accessed off Chaworth Road are substandard, the proposal does not change these parking arrangements from those previously used by the former dental practice. Whilst vehicles may have to reverse out of the parking bays, I observed at my site visit that Chaworth Road is relatively low trafficked and I consider that vehicular intervisibility and pedestrian/vehicular intervisibility is adequate for vehicles egressing the parking bays to see any oncoming traffic or pedestrians. Consequently, I agree with the highway authority's view that the re-use of the existing parking arrangement would not create a severe impact on highway safety.
27. At the request of the highway authority, the appellant also undertook a parking beat survey of available spaces within a 400m walking distance of the appeal site at an identified peak time on a Friday lunchtime. This identified that there is likely to be up to 100 car parking spaces available to act as overspill on residential streets in the vicinity of the site. Against this background, I agree with the highway authority that a severe impact on highway safety would not be created should any overspill parking occur.

28. Notwithstanding the sustainable location of the site from an accessibility perspective, I find that the proposed parking arrangements to be adequate for the use proposed, particularly having regard to the limited size of the building. Moreover, I have no substantive evidence before me to demonstrate that the proposed use would cause an unacceptable impact on highway safety within the context of paragraph 109 of the National Planning Policy Framework (the Framework). In addition, I have no substantive evidence to suggest that the proposal would cause an interruption to the free flow of traffic in the vicinity of the site.
29. Taking the above factors into account, I do not consider that the proposal would result in any unacceptable effects on the safe and efficient operation of the highway network in the vicinity of the appeal site. Consequently, there would be no conflict with Policy 14(2) of the CS or Policy 1(2) of the LPP. These policies, amongst other things, require that proposals should not compromise the effective operation of the local highway network and that the provision of parking is in accordance with advice provided by the highways authority.

Other matters

30. In addition to the main issues that I have identified above, I have taken into account the concerns of local residents regarding the potential for the building to be expanded, potential for the number of worshipers to increase and the fact that planning conditions may not be adhered to.
31. The appeal scheme before me does not propose any external building work and I have no evidence to suggest that future extensions to the building are proposed. In any event, any proposed extensions would likely be subject to planning considerations and policies that exist at the time. The impacts, at that time, on the living conditions of local residents and highway safety would likely require consideration by the Council.
32. Any planning conditions imposed are required to be capable of being enforced. Therefore, the concern that the appellant may not adhere to their requirements has no bearing on the enforceability of any imposed planning conditions.
33. Consequently, although these matters have been carefully noted, they do not alter the main issues which have been identified as the basis for the determination of this appeal, particularly in circumstances where the Council has not objected to the appeal scheme for these other reasons.

Conditions

34. The Council has proposed a number of planning conditions which I have considered against the advice given in paragraph 55 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Government's Planning Practice Guidance. Where necessary I have altered them in the interests of necessity, precision, conciseness or enforceability. I have also deleted one of the suggested conditions for the reasons outlined below.
35. In addition to the standard time limit condition, I have imposed a condition requiring that the proposed use is carried out in accordance with the approved plans. This is in the interests of certainty.

36. The Planning Practice Guidance advises that conditions restricting future changes of use may not pass the test of reasonableness or necessity. In this case the Council has suggested that a condition be imposed that restricts the use to a place of worship and no other uses falling within Class D1 of the Town and Country Planning (Use Classes) Order 1987 (as amended). I have carefully considered the Council's reasons for the suggested imposition of this condition, which relate to the safeguarding of the amenities of residential properties. In this case, I recognise the Council's concerns and I consider the suggested condition to be both reasonable and necessary.
37. For the reasons explained earlier, I do not consider that a condition restricting the hours of use to be reasonable or necessary. I have therefore deleted the suggested condition. However, I agree that a condition is necessary requiring the submission and approval of a Noise Management Plan and I agree with the appellant that this would enable noise to be objectively considered for all hours of use.
38. In order to ensure that the users of the building are safe from fluvial flooding, a condition is necessary that requires the submission of details of flood resilience measures and an evacuation plan.
39. Conditions requiring the demarcation of car parking areas and the retention of the vehicular access and existing boundary treatment are necessary in the interests of highway safety. In order to minimise the need for the use of the car, conditions are necessary requiring the submission of a Travel Plan and Annual Travel Plan Monitoring Report.

Conclusion

40. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The use shall be carried out in accordance with the following approved plans:
Proposed Plans – AL-AR-0002 Rev D
Car Park Tracking Study (1 of 2) - AL-AR-0003
Car Park Tracking Study (2 of 2) - AL-AR-0003
- 3) This permission shall authorise the use of the premises for the purpose applied for only (a place of worship), and no other uses falling within Class D1 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
- 4) Prior to the use hereby approved commencing, a detailed Noise Management Plan shall be submitted to and be approved in writing by the local planning authority. The Noise Management Plan shall identify the types and locations of operational activities which are likely to cause noise disturbance to sensitive receptors and shall:
 - a) Provide details of how noise arising from operational activities, including the use of the car park, shall be minimised by technical and physical means, and through management best practice.
 - b) Identify the person responsible for recording, investigating and dealing with complaints from any residents.
 - c) Provide details of any sound insulation scheme and implementation schedule which shall include mitigation measures to achieve the internal noise levels specified in BS: 8233 at any affected residential property.
 - d) Provide details of the sound insulation scheme for the envelope of the building to prevent noise breakout of the premises.
 - e) Provide details of how the internal noise levels will be controlled and managed to ensure that the noise breakout does not cause noise disturbance.

The use shall thereafter be undertaken in accordance with the approved Noise Management Plan.
- 5) Prior to the commencement of the use hereby approved, details of flood resilience measures to be incorporated into the building and a flood evacuation plan shall be submitted to and approved in writing by the local planning authority. The measures agreed shall be implemented prior to the first use of the building and shall be adhered to for the duration of the use.
- 6) The use hereby approved shall not commence until the parking areas served from Chaworth Road and Loughborough Road have been demarcated as shown on drawing reference: AL-AR-0002 Revision D and shall thereafter be maintained for the duration of the use.

- 7) The existing 5.6m wide vehicular access serving the site, and low-level walls fronting the site on Loughborough Road, shall be retained in this format for the duration of the use and shall not be altered in any manner.
- 8) The use hereby permitted shall not commence until a detailed Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan as a minimum shall contain SMART targets relating to car parking and the promotion of multiple occupancy car born trips, measures, marketing, monitoring and enforcement mechanisms. The use shall thereafter be undertaken in accordance with the approved Travel Plan.
- 9) An Annual Travel Plan Monitoring Report shall be submitted to and approved in writing by the local planning authority no later than 3 months post the first anniversary of the place of worship being brought into use, and this shall continue on an annual basis for the duration of the use. Each annual monitoring report shall include collated parking information to ascertain the level of off-site parking occurring at prayer/event times, revised SMART targets, revised measures alongside revised marketing, monitoring and enforcement mechanisms.