



Appeal Decision

Site visit made on 7 March 2022

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2022

Appeal Ref: APP/E5900/W/21/3282183
116 Jubilee Street, London E1 3EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Manek (NW1 Developments Ltd) against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/21/00842, dated 23 April 2021, was refused by notice dated 18 June 2021.
 - The development proposed is change of use from Class E to flexible Class E (Commercial, Business and Service) and F1(a) Education at ground floor and basement floor unit.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. When planning permission¹ for the building was granted originally, the use of the ground and basement level was described as A1/A2/B1 flexible use class. A non-material amendment² later granted permission to include a Use Class D2 (yoga studio). Whilst the planning permission has been implemented for the original permission, none of these uses at the site on the ground and basement floors have ever commenced, and this floor space remains vacant.
3. Use Class A1, A2 and D2 were revoked by the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. Use Class A1 and A2 and the relevant part of Use Class D2 (for indoor sport, recreation or fitness) has been replaced by Schedule 2, Article 3, Part A, Class E: Commercial, Business and Service use. Use Class B1 (Business) is still in operation.
4. The proposal is for the change of use to a flexible Use Class E and F1(a) (education) on the ground and basement floors. The evidence before me indicates both floors would be used exclusively for the intended tenant, Tanzeel School, as an education use. However, the proposal seeks to protect the existing approved use at the site by proposing a flexible change of use, enabling reversion to Use Class E if the education use were to commence and then cease.
5. There appears to be no dispute over the use of the site for Use Class E, given the original planning permission and amendment granted consent for this type

¹ Application Ref: PA/18/00104

² Application Ref: PA/19/00630/S

of use. Consequently, my decision focusses mainly upon the proposed educational use (Use Class F1(a)), as this is where the dispute lies.

Main Issues

6. The main issues are:

- (a) Whether the proposal would be in a suitable location, having specific regard to local need,
- (b) The effect of the proposal on the living conditions of the occupiers of neighbouring dwellings; and,
- (c) Whether the proposal would result in the loss of employment or retail space.

Reasons

Suitable location

- 7. The property is a recently constructed 5 storey, 6 floor building located on the corner of Jubilee Street and Stepney Way. It is a primarily residential area, located between the A11 and A13 main roads into London. The upper 4 floors contain residential flats. There is also a residential unit that is accessed from Stepney Way separate to the upper floor flats.
- 8. The proposed educational use would provide an afterschool and weekend Islamic studies syllabus for Muslim children with lessons including Arabic language, religious education and mainstream English and mathematics tuition. There would be around 50 children in attendance. Weekdays are proposed to be used for adult training and office work. The appellant sets out that the school became a registered charity in 2012 and benefits the local communities through the delivery of cultural and religious classes, as well as mainstream subjects and by targeting employment towards mothers.
- 9. Policy D.CF3 of the Tower Hamlets Local Plan 2031 (January 2020) (THLP) seeks to ensure that appropriate high quality community facilities are provided in accessible locations throughout Tower Hamlets to adequately support the growing population and meet identified needs. The Policy details that proposals involving the provision of community facilities located outside the borough's town centres will be permitted where an up to date and robust local need can be demonstrated.
- 10. The appellant relies on the existing catchment from an unauthorised education use at 114 and 134 Cavell Street, which is located around 330m northwest of the site. The appellant states this proposal would replace the use at Cavell Street. It is asserted that all 50 students would be within a 10 minute walk from the site and most live on surrounding roads.
- 11. Although the proposal would be intended to replace the other facility, I have no mechanism before me to require the re-location and closure of the business at Cavell Street and thus there could be 2 uses of this type in operation within 5 minutes' walk outside the borough's town centres.
- 12. The appellant asserts that the Council did not request them to provide additional information during the consideration of the application relating to local need, nor does Policy D.CF3 describe what local need is. Nonetheless, I must consider the evidence before me, which provides no substantive evidence

that I can interrogate to demonstrate that there is local need not being met elsewhere in the neighbourhood, or that the students would be local to the site.

13. Whilst I acknowledge there may be concerns over data protection, claims from the appellant about where the students signed up may live, or what the general catchment area is, are not sufficient to demonstrate a robust and up to date local need.
14. Therefore, given the site's location outside the borough's town centre and based on the evidence before me, the proposal would not be in a suitable location, contrary to Policy D.CF3 of the THLP.

Living conditions

15. The evidence indicates that there would be no more than 50 students on site at any given time and classes would be split into groups of around 12 students. The opening hours would be 09:00 – 19:00 during weekdays and 09:00 – 19:30 at weekends. The Council detail that the opening hours are reasonable, sociable hours. Students would also remain within the premises during breaks and be overseen by staff, with most classes taking place within the basement.
16. Based upon the submitted Noise Assessment³, the Council's Environmental Health team raise no objections to the proposal, recommending conditions for sound attenuation, background noise and management strategies. However, the Council remain concerned that relying upon conditions to secure acceptable noise levels for up to 50 students and parents around the building would be problematic, further exacerbating the issue of whether the proposal is local in scale, or the building is suitable for this use.
17. I disagree. The Noise Assessment concludes that the proposal would be unlikely to have a significant impact on surrounding premises, with the use of a street management policy and taking account of the existing internal construction. Whilst I recognise that activities would take place over the weekend, these would be during the day and a condition for street management could be put in place for the arrival and departure of students, including staggered entry times and staff supervision. This would ensure that the people entering and leaving the site would create little disruption to the living conditions of nearby residential occupiers. A condition could also ensure no amplified sound internally and externally.
18. Moreover, the conditions are suggested to effectively manage any noise disruptions. Relying upon conditions to make unacceptable development acceptable is the reason why conditions exist. Therefore, given the intended hours of use and operation, and with the suggested conditions, noise arising from the premises is unlikely to cause a significant impact upon the living conditions of the occupiers of neighbouring dwellings. This would be compliant with Policy D.DH8 of the THLP, which seeks to ensure developments enable residents and occupants to enjoy good levels of amenity.

Loss of employment or retail space

19. Policies D.EMP3 and D.TC3 of the THLP both seek to ensure development does not result in the loss of viable employment floorspace or A1 shops. There are marketing requirements in both policies to demonstrate efforts have been

³ Hawkins Environmental Limited, H3290 – NV – v1, dated 5 April 2021

made to market the shop or employment use with appropriate/reasonable rents.

20. Whilst these policies seek to retain employment or retail uses, the proposal is for a flexible use, and therefore, it could revert to employment or retail use if the education use were to commence and then cease. Therefore, there would be no permanent loss of the existing employment space or retail space. Moreover, the uses have never been implemented with the site remaining vacant since construction, so there is no actual active employment or retail space being lost presently.
21. Consequently, the proposal would not result in the loss of employment or retail space, compliant with Policies D.EMP3 and D.TC3 of the THLP, which together seeks to ensure the supply of employment land and retail space is maintained.

Planning Balance

22. The proposal would not result in the permanent loss of employment or retail space and would have an acceptable effect upon the living conditions of the occupiers of neighbouring dwellings. It may also provide other benefits to the local communities.
23. However, the site is located outside the borough's town centre, and based on the evidence before me, the proposal would not be in a suitable location given the failure to demonstrate substantive evidence proving an up to date and robust local need. This would be contrary to Policy D.CF3 of the THLP. Given this would establish the principle of acceptability for the proposal, this would outweigh my findings in respect of the other main issues and asserted benefits.

Other Matters

24. I have had significant regard to the comments provided by interested persons. However, as I am dismissing the appeal, it is not necessary to consider these matters any further.

Conclusion

25. For the reasons set out above, I conclude that the appeal should be dismissed.

Katie McDonald

INSPECTOR