
Appeal Decisions

Site visit made on 15 March 2022

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5TH April 2022

Appeal A Ref: APP/B5480/W/21/3278868

148A Chase Cross Road, Romford RM5 3UU

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Iqra Educational & Cultural Centre against the decision of the Council of the London Borough of Havering.
 - The application Ref P1850.20, dated 9 December 2020, was refused by notice dated 3 February 2021.
 - The application sought planning permission for a single storey building with car parking and entrance drive for use as meeting room without complying with a planning condition attached to planning permission Ref P0729.99, dated 5 August 1999.
 - The condition in dispute is No 8, which states that: 'The premises shall only operate between the hours of 6.00am and 3.00pm on Sunday and from 6.00pm to 9.00pm on Monday'.
 - The reason given for the condition is: 'In order to minimise the impact of the use on the surrounding residential area'.
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Appeal B Ref: APP/B5480/W/21/3278982

148A Chase Cross Road, Romford RM5 3UU

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Iqra Educational & Cultural Centre against the decision of the Council of the London Borough of Havering.
 - The application Ref P0450.21, dated 10 March 2021, was refused by notice dated 1 July 2021.
 - The application sought planning permission for a single storey building with car parking and entrance drive for use as meeting room without complying with a planning condition attached to planning permission Ref P0729.99, dated 5 August 1999.
 - The condition in dispute is No 8, which states that: 'The premises shall only operate between the hours of 6.00am and 3.00pm on Sunday and from 6.00pm to 9.00pm on Monday'.
 - The reason given for the condition is: 'In order to minimise the impact of the use on the surrounding residential area'.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is allowed and planning permission is granted for a temporary period of 18 months for a single storey building with car parking and entrance drive for use as meeting room at 148A Chase Cross Road, Romford RM5 3UU in accordance with the application Ref P0450.21, dated 10 March 2021, without compliance with condition No 8 previously imposed on planning permission Ref P0729.99, dated 5 August 1999, and subject to the conditions included in the Schedule at Annex A.

Preliminary Matters

3. As set out above, there are two appeals concerning proposed variations to a condition which provides the permitted times of use of the same building. I note that the proposal in Appeal B involves changes to the proposed variation of the condition following the refusal of the proposal in Appeal A. As two separate appeals have been made, I have considered each proposal on its individual merits.
4. The Council indicates that since the decisions on both applications were made, it has adopted the Havering Local Plan 2016-2031 (2021). The policies referred to in the decision notice in each case have been superseded by policies from the new Local Plan, which address the same matters. Accordingly, I have had full regard to the relevant policies from the adopted plan.
5. My attention is drawn to a recent appeal decision involving a proposal for variation of the same condition concerning times of use of the appeal building¹. Given the relevance of that decision to the current appeals I have had regard to it and refer to it where appropriate.
6. As in the earlier appeal, the evidence provided in these cases suggests that use of the building to date has occurred outside the times permitted by the disputed condition. As such, I have dealt with the appeals under section 73A of the Town and Country Planning Act 1990.

Main Issue

7. The main issue with regard to both appeals is the effect of the proposed variation to the disputed condition in each case on the living conditions of neighbouring residents, with particular regard to noise, disturbance and light pollution.

Reasons

8. The appeal site includes a single storey building with an access drive from Chase Cross Road and parking for some nine vehicles. The surrounding area is predominantly residential in character. The dwellings closest to the appeal site are those in front of it with frontages on Chase Cross Road and those to the rear along Cardiff Close.

¹ APP/B5480/W/19/3243037 dated 14 May 2020.

9. The appellant provides information in the appeal submissions that is relevant background for both appeal proposals. The principal use of the appeal site relates to religious worship, with Islamic worship requiring five obligatory prayers per day. Typically each prayer lasts in the order of 10 to 15 minutes with attendance of between five and 20 visitors for typical daily prayers. The exception to this is the Friday midday prayers, which attracts considerably more visitors, but which will continue to take place in a different community centre.
10. The building would also be used for Islamic education purposes with two hour sessions taking place on weekdays in the late afternoon and early evening and on Saturday and Sunday late mornings (although these appear to take place on Saturdays and Sundays only for Appeal B). These sessions involve approximately 15 to 20 attendees.
11. The appellant indicates that for daily prayers involving up to 20 attendees around five private vehicles would use the site, with a further two taxis visiting the site. The remaining visitors are car passengers or arrive by public transport, cycle or on foot.
12. While the existing levels of use are as indicated above, I note also that the main hall of the appeal building can accommodate approximately 60 to 70 people.

Appeal A

13. The disputed condition limits use of the premises to Sundays and Mondays only, from 6.00am to 3.00pm and from 6.00pm to 9.00pm respectively. The proposed variation in this appeal is to allow use Monday to Friday from 07:00 to 21:00; on Saturday and Sunday from 08:00 to 17:30; and on Bank Holidays from 09:00 to 13:00.
14. In the previous appeal referred to above the proposed variation involved use for around half the year from 06:00 to 21:30 and the other half from 04:00 to 23:30. Due to the early and late times of day and night proposed the Inspector found that the variation would result in significant harm to nearby residents' living conditions.
15. I acknowledge that the current proposal seeks to respond to this earlier decision by reducing the hours of use. Nonetheless, the extent of the use compared to that currently permitted on two days of the week would be of much greater intensity, with regular use every day of the week, including weekends and on Bank Holidays. Despite the change in the very early and late hours of use in the previous appeal, the proposal still involves use on weekdays at times when residents are likely to be at home both in the mornings at 07:00 and evenings up to 21:00. Moreover, the extent of all day use on weekends would coincide with times when residents are likely to be at home for longer periods. While the use on Sundays would begin a couple of hours later than the permitted use, the proposed level of overall use is materially greater than the permitted level.

16. The appellant contends that the existing level of visitors suggests that the effects of vehicle noise, car doors and general background noise is limited and not harmful. However, the nature of the proposed use would involve regular comings and goings throughout the day related to prayer times and the other uses proposed. As with the earlier appeal, the effects of such levels and frequency of use are particularly likely to be apparent to the nearest residents to the site during the summer months when windows and doors are open and gardens are most likely to be in regular use, including in the evenings and at weekends.
17. While Chase Cross Road is busy with relatively high traffic volumes, this is not directly comparable to the types of noise associated with comings and goings from a building and vehicles parking with related engine and door noise close to residential properties in a backland location away from the road. As such, the levels combined with the overall extent and frequency of visits during the days and times proposed would result in material harm to nearby residents' living conditions. I consider, however, that there would be no substantively harmful effects related to headlights, which would be the principal source of any light pollution, due to boundary fencing surrounding the site and because use of the building during hours of darkness would be limited.
18. I am also mindful of the capacity of the building, which could accommodate some 60 or 70 people. Increases in visitor numbers from existing levels could therefore occur, even in the short term. I note in this regard that the appellant proposes a temporary permission for 18 months with a review after 12 months. While I acknowledge the intention behind this, it would not address the findings with regard to the harmful effects on nearby residents from the increased intensity and frequency of use under the appeal proposal. Similarly, a personal permission limited to the appellant would not overcome the harm that has been found.
19. As the appellant contends, the National Planning Policy Framework actively promotes provision of community facilities, including places of worship. However, this does not overcome findings of material harm arising from the proposed use of a site in individual cases such as this.
20. I have had regard to the substantial number of representations from interested parties both supporting and opposing the proposal. It is contended that while the use for worship has occurred outside the permitted hours over recent months there have been no complaints of noise or disturbance upheld against the use. However, I concur with the Inspector in the previous appeal that this alone cannot be taken as indicating an absence of harm. Moreover, objections on this basis have been made with regard to this appeal.
21. Concerns have been raised by interested parties about unauthorised parking on surrounding roads associated with the use of the appeal building. However, as in the earlier appeal I note that in this case the Council has not raised any concerns with regard to highway safety. Based on the available information, I have no basis to find otherwise, particularly given the management and monitoring measures proposed by the appellant, which could be required by condition.

22. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal concerns a proposed extension of the times that the appeal site may be used for the purposes of Islamic religious worship, those who attend for this purpose share a protected characteristic for the purposes of the PSED.
23. The implications of the failure of this appeal would be to limit the time periods for worship to take place at the appeal building. I acknowledge also that there may be limited facilities for local worship and that use of the appeal building reduces the need to travel to other locations; and that it provides a community facility for a range of uses. However, these considerations need to be balanced with the findings of material harm that would arise to nearby residents in the particular circumstances of the location and proposed levels and frequency of use of the building. On balance and after careful consideration, I find that the PSED does not provide sufficient reason to overcome the harm that would occur as a result of the appeal proposal.
24. In reaching this view I have had regard to the contention that there are a number of other places of worship in the surrounding area that are not subject to the same level of restricted use as the appeal building. However, I have no details of the location of these places of worship, their relationship to residential properties or the levels and frequency of their use. As such, I cannot make a direct comparison with the main issue in this appeal concerning use of the appeal building.
25. Therefore, taking these findings as a whole and for the above reasons, I conclude that the proposed variation to the disputed condition would have an unacceptably harmful effect on the living conditions of neighbouring residents, with regard to noise and disturbance. Consequently, the proposal is contrary to Policy 16 of the Havering Local Plan 2016-2031 (2021), which states that the Council will support proposals for social infrastructure facilities provided that, amongst other matters, they do not adversely impact on residential character and amenity. Policy 24 concerning parking provision and Policy 34 concerning managing pollution are less directly relevant to the main issue.

Appeal B

26. The proposal in Appeal B is to vary the permitted hours of use as follows: Monday to Friday from 12:00 to 19:30; and Saturday, Sunday and Bank Holidays from 12:00 to 17:30. The appellant explains that this proposal reduces the hours from the original appeal and Appeal A to respect residential amenity, and that these hours will offer the opportunity to visit the centre to pray on the way home from work.
27. The hours proposed here represent a substantive change to those previously proposed. In particular, while the building would be in use every weekday, the start and finish times are materially shorter, particularly in the morning, and would coincide with periods when residents are more likely to be at work or

otherwise away from home. The proposed times of use at weekends would also be considerably shorter by starting four hours later than proposed under Appeal A. As such, with the attendance levels and vehicular visits indicated in the appeal submissions, these periods of use are unlikely to result in material harm. I note in this regard that both main parties suggest a temporary permission to enable the effects of the proposed use to be monitored and assessed.

28. I agree that this would be appropriate and necessary in the circumstances and am also mindful of the capacity of the main hall, which could result in an increase in visitor numbers over time. This could lead to greater vehicle movements and other associated noise and disturbance that could be harmful to neighbours' living conditions. I see no basis currently for limiting the number of users of the building at any one time to 30, as the appellant suggests. It is unclear what the effects of this would be and, therefore, any effects related to this or other levels of use above those indicated in the appeal submissions that might arise would need to be monitored and assessed. There is no reason to make the permission personal to the appellant, as suggested.
29. The Council proposes monitoring visitors arriving by car with reviews after six and 12 months and a new survey of travel modes. While daily logging does not have to be required by condition, monitoring and reporting in association with the temporary permission needs to be formalised. As such, a condition is necessary which reflects the Council's proposal with reporting on visitor numbers and transport modes after six and 12 months.
30. The addendum to the officer's report on the application includes a proposed condition that appeared to provide for a temporary permission for a period of 12 months. The same condition included in the Council's appeal statement has the permission expiring on the 1 March 2022, which clearly is not possible. The appellant suggests a temporary permission of 18 months duration. On balance, an 18 month period would be appropriate to enable the levels of use to become established and assessed, including through monitoring and reporting in accordance with the proposed approach referred to above.
31. I have had regard to all the representations from interested parties both supporting and opposing the proposal. As for Appeal A, with regard to concerns about unauthorised parking on surrounding roads I am not aware that the Council has raised any concerns with regard to highway safety. I have no basis to find otherwise and the management measures proposed by the appellant can be required by condition. I have no basis to find that use of the access at the levels proposed would result in harm to highway safety.
32. Due to the boundary fences in place there is no basis to suggest that the use would result in a loss of privacy for the occupiers of No 148 Chase Cross Road. I acknowledge the concerns about previous and possible future use of the building occurring beyond the permitted times, but these concerns cannot have a determinative influence on the appeal decision and are properly matters for the Council to address should they occur. Similarly, concerns about fire safety matters relating to use of the building are not within the scope of this appeal, which is only concerned with the planning merits of the proposal.

33. As for Appeal A, in considering this proposal I have had due regard to the Public Sector Equality Duty (PSED). For the reasons given, the appeal proposal succeeds and, therefore, those using the appeal site for religious worship, who have protected characteristics for the purposes of the PSED, would be able to do so to a greater extent than previously permitted.
34. Accordingly, for the reasons given above, I conclude that with the relevant conditions in place, particularly providing for a temporary extension to the times of use, the proposed variation to the disputed condition should be allowed. As such, the proposal is not contrary to Policy 16 of the Havering Local Plan 2016-2031 (2021), as described above with regard to Appeal A.

Other Matters

35. Concerns are raised by a number of interested parties about the process that led to the refusal of the application involved in Appeal B, including matters raised at the relevant committee meeting. However, such matters about Council processes are not within the scope of this appeal and, therefore, it would not be appropriate for me to address them.

Conclusion and Conditions

36. For the reasons given above, Appeal A is dismissed while Appeal B is allowed.
37. For Appeal B, the temporary permission for 18 months and related monitoring and reporting should be required by condition for the reasons already given. The condition setting out the permitted times also includes the requirement that, after the 18 month period, unless otherwise agreed by the Council the permitted days and times of use should revert to that originally approved. This is necessary to ensure clarity and appropriate use of the building in accordance with what has been approved.
38. Of the other suggested conditions, I have imposed the requirement to comply with the submitted Management Plan to manage use of the building in the interests of amenity and highway safety. Conditions controlling amplified music or speech and the use of the building are necessary for compatibility with the surrounding residential area. A condition requiring retention of parking spaces and control of use of the car park is necessary in the interests of amenity and highway safety.
39. The Planning Practice Guidance makes clear that decisions for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect². The majority of conditions imposed on the original permission are standard commencement or implementation conditions, which have either been discharged or superseded by those conditions already referred to. The exception is condition No 10, which requires the access to the site to remain unobstructed in the interests of pedestrian and highway safety. I have, therefore, imposed this as the final condition.

J Bell-Williamson INSPECTOR

² Paragraph: 015 Reference ID: 17a-015-20140306.

Annexe A

Schedule – conditions

- 1) The premises shall only be used for a place of worship and religious instruction as set out in the Management Plan submitted with the application hereby approved and for no other purpose, including uses falling within Class F1 of the Town and Country Planning Use Classes Order 1987 as amended.
- 2) For a period of 18 months from the date of this permission, the premises shall only operate between the hours of 12:00 to 19:30 on Monday to Friday inclusive and 12:00 to 17:30 on Saturday, Sunday and Bank Holidays. Unless otherwise agreed by the local planning authority, from the end of this 18 month period the premises shall only operate between the hours of 06:00 to 15:00 on Sunday and 18:00 to 21:00 on Monday, with no operation at all on any other day of the week.
- 3) The premises shall at all times operate in complete accordance with the Management Plan submitted with the application hereby approved.
- 4) The visitor numbers will be monitored regularly and reviewed after six and 12 months from the commencement of this permission in the form of an updated survey of visitor numbers and travel modes to be submitted to the local planning authority.
- 5) No amplified music or speech shall be relayed on the site including within the building.
- 6) Parking for nine cars shall be retained on the site in accordance with drawing numbers 99091.1 and 99091.3 approved as part of planning permission P0729.99, dated 5 August 1999. No vehicle parking shall take place other than for those attending the premises during the authorised hours of operation.
- 7) There shall be no obstruction or obstacle above 600mm in height in the area of the accessway hatched in red on the plans approved as part of planning permission P0729.99, dated 5 August 1999.

[End of Schedule]