



Appeal Decision

Hearing held and site visit made on 21 June 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2022

Appeal Ref: APP/T5150/C/17/3180565

852A-C and rear of 852 Harrow Road, Wembley HA0 2PX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Syed Veqar Hussain against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/16/0318, was issued on 12 June 2017.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the premises to a mixed use as residential and community centre/place of worship and the erection of floodlights to the premises and the erection of a flag and signage to the premises.
- The requirements of the notice are: (1) Permanently cease the use of the premises as a community centre/place of worship; (2) Remove all equipment, materials and items, including bins, associated with the unauthorised change of use from the premises; (3) Remove the floodlights and all debris, materials and items associated with the floodlights from the premises; and (4) Remove the flag and signage and all debris, materials and items associated with the flag and signage from the premises.
- The period for compliance with the requirements is: 1 month after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- This decision supersedes that issued on 1 November 2018.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary matters

1. The appellant's name was confirmed as above at the Hearing and in subsequent correspondence, not as spelt on the appeal form.
2. The appellant and the Council agree that the operational development includes the erection of a flagpole, rather than the erection of a flag, and that the notice could be corrected accordingly without injustice.
3. An appeal had been made on ground (c)¹ in respect of the signage but no evidence that it does not constitute development, as defined by section 55(1) of the Act, was presented. The appellant advised at the Hearing that he no longer wished to pursue the appeal on that ground.
4. The charitable institution that owns the appeal site and the place of worship/community centre at 856 and 858 Harrow Road has acquired the dwelling between the 2 sites, 854 Harrow Road, since the previous decision. However,

¹ That (the matters stated in the notice which give rise to the alleged breach of planning control) if they occurred, do not constitute a breach of planning control.

the use of No. 854 remains residential, so the change of ownership does not alter the assessment to be made in the appeal on ground (a).

5. The development plan has changed since the notice was issued, with the publication of the London Plan in March 2021 and the adoption of the Brent Local Plan 2019-2041 ("the BLP") in February 2022. In addition, the National Planning Policy Framework was revised in July 2021. The parties were invited to comment on these changes.
6. The appellant and others gave a unilateral undertaking to the Council under section 106 of the Act on 18 April 2019. It includes 2 obligations that would have effect if the appeal on ground (a) were to succeed and the deemed planning application (DPA) be granted, and under which the owner of the appeal site covenants as follows:
 - 3.1.1 Not to allow any part of the land other than the Mosque to be used for the purposes of religious worship pursuant to the planning permission; and
 - 3.1.2 Not to permit the Mosque to be attended by more than 30 (thirty) people at any one time for the purposes of religious worship in accordance with condition 3 on the planning permission.
7. The condition 3 referred to, imposed under the previous decision, was "The Mosque shall not be occupied by more than 30 people at any one time."

The appeal on ground (a)

8. The main issues in this appeal are the effect of the development on:
 - The character and appearance of the area.
 - The living conditions of nearby residents.
 - The highway network, including the adequacy of on-site parking provision.

Reasons

9. The appeal site fronts a local distributor road and adjoins residential properties on Holmefield Road to the north, and at 854 Harrow Road to the immediate west. 856 and 858 Harrow Road have been granted planning permission for use as a place of worship/community centre (use Class D1) and ancillary residential use. To the immediate east, fronting Harrow Road and Watford Road, is the public open space of Butler's Green, which includes a children's play area near the appeal site.
10. The appeal site is now being used differently from when the notice was issued, primarily through the cessation of occasional use of the rear yard for religious festivals that were attended by large numbers of people. The DPA is now limited to twice daily prayers, the first beginning no sooner than midday and the second ending no later than 2230, attended by a maximum of 30 people at any time, with no weddings, funerals, festivals or outdoor events ("the Mosque use") and the erection of the floodlights, flagpole and signage.
11. The DPA also restricts the Mosque use to the ground floor of the buildings within the centre of the site, excluding the part currently occupied by the dwelling at 852E Harrow Road ("the Mosque building"). The DPA excludes food

preparation, and the kitchen building at the rear of the site is not currently used for that purpose.

12. While the DPA does not include residential use, it forms part of the mixed use constituting the alleged breach of planning control. The notice does not include any requirements to cease or otherwise affect the residential component of the mixed use. Furthermore, while neither party has referred to them, I have been presented with policies within the London Plan and the BLP that support further housing provision in locations such as this².
13. When greater numbers of worshippers attend prayers, notably on Fridays and during Ramadan, they are held at Nos. 856 and 858. It is only possible to pass from there to the appeal site via Harrow Road and there is no evidence of an everyday functional link between the 2 sites, other than the appellant's confirmation that some parking for disabled people attending Nos. 856 and 858 takes place at the appeal site.
14. The Council understood there were 3 residential units within the appeal site when it issued the notice; however, there are now 5, numbered 852A, B, C, D and E. While each unit is distinct, the access, parking and refuse storage arrangements involve use of some areas that are also ancillary to the Mosque use. Accordingly, the appeal site is in a mix of uses, with no use being incidental to another.
15. While an appeal has not been made on ground (b)³ the appellant contends that a community centre use had not been instituted at the time the notice was issued. The Council considers the components of the community centre/place of worship use cannot be separated and refers to statements in support of the appeal that suggest joint use of the appeal site with the place of worship/community centre at Nos. 856 and 858. However, while those statements refer to 'community', it is not clear that they mean a community centre, whether in conjunction with Nos. 856 and 858 or not, rather than the faith community served by the Mosque.
16. In any event, the use included within the DPA, restricted to twice daily prayers within the Mosque building, attended by a maximum of 30 people at any time, is clearly identifiable. Therefore, while it forms part of the matters constituting the alleged breach of planning control, it can be distinguished from the other components of the mixed use.

Character and appearance

17. The surrounding area is predominantly residential, with some non-residential uses on Harrow Road, west of its junction with Watford Road. These include the place of worship/community centre at Nos. 856 and 858, 2 churches, and a shopping parade including a restaurant. Harrow Road is a wide and relatively busy road and in contrast, residential side roads, including Holmefield Road to the rear of the appeal site, are narrower and quieter.
18. Even allowing for the expected levels of activity on Harrow Road and in Butler's Green, the activity associated with outdoor events, attended by many people,

² London Plan policies H1 (Increasing housing supply) and H2 (Small sites); BLP policies BH1 (Increasing Housing Supply in Brent), BH2 (Priority Areas for Additional Housing Provision within Brent) and BH4 (Small Sites and Small Housing Developments in Brent).

³ That (the matters stated in the notice which may give rise to the breach of planning control) have not occurred.

within the appeal site would have altered the character of the area. The character of the predominantly residential locality would therefore not have been complemented, contrary to policy DMP1, 'Development Management General Policy', of the BLP.

19. The Mosque use of the DPA restricts the numbers of people visiting for non-residential purposes at any time and excludes outdoor events. The appellant's statement that the appeal site has operated in this way since November 2018 is not contested. Neither is his evidence that no more than 7 people have attended prayers in the Mosque building at any time between 1 January and 12 June 2022. Evidence that this, or attendance by up to 30 people, as sought in the DPA, would not complement the character of the locality is absent.
20. The flagpole is set within the site, away from Harrow Road, and adjacent to a high hedge forming the boundary with Butler's Green. As a result, it is an unobtrusive feature that complements the character of the locality. The signage was formed by adapting a double-sided board that existed when the appeal site was previously occupied by a building contractor. It is of a scale and form often found at places of worship, comparable to those at St Andrew's Anglican Church and Sudbury Methodist Church nearby. It thereby complements the character of the locality.
21. The floodlights resemble streetlights and are sited along part of the boundary with Butler's Green. While the hedge on that boundary will lessen their effect, such illumination away from the road would have some effect on character and appearance. However, illumination would only be needed for limited periods under the terms of the DPA, and this could be secured by condition if the appeal were to succeed.
22. Accordingly, unlike the situation when the notice was issued, the Mosque use, and the associated operational development, would accord with policy DMP1 of the BLP and be acceptable in terms of character and appearance.

Living conditions

23. The large numbers visiting the appeal site when events were held in outside areas meant that significant levels of activity, with attendant noise and general disturbance, had been experienced when the notice was issued. This took place adjacent to the garden areas of 854 Harrow Road, and Nos. 5 and 7, and Westwood Court, on Holmefield Road.
24. Activity and odour arising from any food preparation in the kitchen building, adjacent to the back gardens of 5 and 7 Holmefield Road, would have added to the general disturbance. A similar effect on the occupiers of the 5 residential units within the appeal site should be expected. While the appellant stated the kitchen building was only used to make tea, the equipment within it, including a large range and vented extraction, could be used to cook significant amounts of food. Any such use of the kitchen would unacceptably increase nearby residents' exposure to noise, smells and general disturbance, contrary to policy DMP1 of the BLP.
25. The effects of the Mosque use, which accords with how the site has operated since November 2018, are different. Although people attending the Mosque may tarry to converse after prayers, or at the flagpole, their numbers are significantly lower, and the duration would be, in all probability, significantly

shorter than the outdoor events. While concerns were expressed about these matters, evidence that they have caused harm to living conditions, or would do if as many as 30 people attended afternoon or evening prayers, and only within the Mosque, was absent. Furthermore, while it was suggested that prayers could be held continuously, thereby allowing greater numbers to attend throughout the day, no evidence that this had occurred, or is likely, was presented. In contrast, the appellant stated that such a practice would be incompatible with his faith.

26. Evidence of any effect of the signage or the flagpole on living conditions was not presented. Light spillage from the floodlights could have some effect on the living conditions of the closest residential neighbours, including those within the appeal site, but it would only be needed for limited periods. This could be ensured by condition if the appeal were to succeed.
27. Therefore, unlike the situation when the notice was issued, the Mosque use, and the associated operational development, would accord with policy DMP1 and be acceptable in terms of living conditions.

Highway network and parking

28. The Council's reasons for issuing the notice refer to public transport accessibility and an insufficient level of parking provision, and development plan policy then in place sought a fixed level of on-site parking provision. However, BLP policy BT2, 'Parking and Car Free Development', adopted since the notice was issued, takes a different approach. It requires development to either be car-free or, in locations that are not well-connected by public transport, provide parking up to a maximum level.
29. The appeal site is in a location with moderate accessibility, Public Transport Accessibility Level 3, where parking provision in line with the maximum standards at Appendix 4 to the BLP is appropriate. Those standards confirm that, for a place of worship, policy BT2 allows no more than 1 car parking space to be provided for every 10 users/visitors on site at any time. This translates to up to 3 on-site car parking spaces for the Mosque use and there is no evidence to suggest that could not be achieved. Subject to the imposition of a suitable condition, the DPA would therefore accord with policy BT2 of the BLP.
30. It was reported that vehicles had reversed onto Harrow Road, something that could endanger highway users. However, if no outside events were held, and if parking provision were in line with BLP requirements, there would be adequate space for vehicles to turn within the site and leave in forward gear, which would avoid conflict with criterion b) of policy DMP1 of the BLP. This could be secured by condition if the appeal were to succeed.

Other Matters

31. Part D of London Plan policy S1, 'Developing London's social infrastructure', provides support for high quality, inclusive social infrastructure that addresses a local or strategic need and supports service delivery strategies. While the Council suggested this policy does not apply to changes of use, that is not apparent from the wording of the policy or its supporting text. However, it was agreed that part I of London Plan policy GC1, 'Building strong and inclusive communities', does provide support for the Mosque use.

32. BLP policy BSI1, 'Social Infrastructure & Community Facilities', supports new social infrastructure, which would include a Mosque. Criterion f) of the policy requires new infrastructure to be located within the community it is intended to serve. While the Council advised that people living outside Brent attend prayers at the appeal site, there was no indication of the proportion of worshippers they comprise, and it was accepted that Brent residents also attend. Even if it could be shown that most, or all people attending prayers at the appeal site live elsewhere, there is nothing explicit in the policy or its supporting text to indicate that 'community' in criterion f) means only Brent residents.
33. Criterion i) of policy BSI1 seeks to maximise wider community benefit when new facilities are provided and allows for formal community use agreements to achieve that aim, if necessary. Although the appellant does not propose any shared use of the Mosque building, a judgement must be made as to whether a formal community use agreement is required in each case. No evidence of a need for additional shared space in the locality was provided.
34. London Plan policies S1 and GC1 and BLP policy BSI1 therefore provide support for the Mosque use.

Conclusion on ground (a)

35. For the reasons given, while the use occurring when the notice was issued failed to complement the locality, and increased residents' exposure to noise and other disturbance, the proposed Mosque use would not. Subject to appropriate controls in terms of the floodlighting, the associated operational development would complement the locality and avoid increased exposure to noise and other disturbance.
36. The DPA therefore draws support from London Plan policies S1 and GC1 and BLP policy BSI1, and can accord with BLP policies DMP1 and BT2. The appeal should therefore succeed insofar as it relates to the Mosque use, comprising the use of the Mosque building for twice daily prayers with no more than 30 people in attendance at any one time and excluding use as a community centre, and the associated operational development. I shall grant planning permission accordingly, subject to conditions, so the appeal on ground (g) does not need to be considered.

Conditions

37. Condition 1 is necessary to define the permission to accord with the DPA in terms of the Mosque use and the nature of the associated operational development. This is to avoid harm to the character of the area and the living conditions of nearby residential occupiers.
38. Condition 2 will ensure that worship is only undertaken within the Mosque building in accordance with the scope of the Mosque use. While it will duplicate some controls put in place by the unilateral undertaking, that is unavoidable because the area of the Mosque defined in the unilateral undertaking is not the same as that shown on Revised Plan PL01 before me. Condition 3 will regulate the use of areas outside the buildings. Both are necessary to avoid harm to the character of the area and the living conditions of nearby residential occupiers.
39. Conditions 4, 5 and 6 will restrict the use of amplified sound equipment, limit the hours during which the floodlights may be used, and prevent use of the

kitchen building other than for storage ancillary to the place of worship. All are necessary to avoid harm to the living conditions of nearby residential occupiers.

40. Condition 7 is necessary to secure a scheme for parking and turning within the site, to avoid conflict with policy BT2 of the BLP, which seeks to restrict car parking to reduce unnecessary car trips, promote effective use of land and safeguard environmental quality. The condition is also necessary to minimise the risk of vehicle movements that could endanger highway users, thereby avoiding conflict with policy DMP1 of the BLP.

Formal Decision

41. It is directed that the enforcement notice is corrected by the deletion of the word "flag" and the substitution of the word "flagpole" in Schedule 2.
42. Subject to the correction, the appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the material change of use of the Mosque building to a place of worship and the erection of floodlights to the premises and the erection of a flagpole and signage to the premises at 852A-C and rear of 852 Harrow Road, Wembley HA0 2PX as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

Mark Harbottle

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Andrew Fraser-Urquhart QC
Robert Pomery BA (Hons) DipTP MRTPI, Director, Pomery Planning Consultants
Syed Veqar Hussain, appellant
Mohammed Askari
Mohammad Sajjad

FOR THE LOCAL PLANNING AUTHORITY:

Nigel Wicks MRTPI, Director, Enforcement Services Ltd.
Tim Rolt MRTPI, Planning Enforcement Manager, London Borough of Brent

INTERESTED PARTIES:

Renu Kaul, Sudbury Town Residents' Association
Jaafar Al Musaad
Kamli Kaul, Sudbury Town Residents' Association

Documents submitted at the Hearing

- 1 High Court transcript of R (oao Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin)
- 2 Court of Appeal transcript of R (oao Bates) v Maldon District Council [2019] EWCA Civ 1272
- 3 Spreadsheet recording daily attendances at the Mosque between 1 January and 12 June 2022
- 4 Copy of the unilateral undertaking relating to the appeal site dated 18 April 2019
- 5 The appellant's revised suggested planning conditions
- 6 Plan PL01

Document submitted after the Hearing

- 1 Revised Plan PL01

Schedule of Conditions

- 1) The development hereby permitted is the material change of use of the ground floor accommodation within the centre of the site, shown edged red on the attached Revised Plan PL01, to a place of worship and the operational development of the erection of floodlights to the premises and the erection of a flagpole and signage to the premises. It does not include use as a community centre.
- 2) The place of worship, as defined in condition 1 above, shall only be used for prayers and not for weddings, funerals or festivals, or any other purpose. It shall only be used during 2 periods, each no longer than 2½ hours' duration, between midday and 2230 hours each day. It shall not be occupied by more than 30 people at any one time.
- 3) The land outside of any building within the appeal site shall only be used (a) for purposes ancillary to the use of the place of worship, including parking for people attending it; (b) as any amenity space for the residential units on the site; (c) for any parking ancillary to those residential units or for disabled persons using the place of worship/community centre at 856 and 858 Harrow Road; and for no other purpose. For the avoidance of doubt, activities ancillary to the use of the place of worship do not include the erection of any tent or marquee, the holding of outdoor events, or food preparation.
- 4) Other than within any residential units on the site, no amplified sound equipment shall be used within the site.
- 5) The floodlights hereby permitted shall be switched off not later than 2300 hours each day and shall not be switched on again before midday the following day.
- 6) The outbuilding located to the rear of the site, adjacent to 7 Holmefield Road and the playground at Butler's Green, shall only be used for storage in association with the place of worship.
- 7) The use as a place of worship shall cease and the floodlights, flagpole and signage shall be removed within 1 month of the date of failure to meet any one of the requirements set out in i) to v) below:
 - i) Within 3 months of the date of this decision, a parking and turning scheme shall have been submitted for the written approval of the Local Planning Authority. The scheme shall include details of:
 - a) Parking for people attending the place of worship within the site.
 - b) Any parking for disabled people visiting the place of worship/community centre at 856 and 858 Harrow Road.
 - c) Any parking for the occupiers of the residential units within the site.
 - d) Turning facilities to allow vehicles to leave the site in forward gear.The approved parking and turning facilities shall then be provided in full and in full accordance with the approved details within 3 months of being approved. Parking and turning within the site shall be operated in accordance with the approved scheme thereafter.
 - ii) If within 6 months of the date of this decision the Local Planning Authority refuses to approve the scheme or fails to give a decision

within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been implemented in full and completed in full accordance with the approved timetable.
- v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained and maintained as approved.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Revised Plan PL01

This is the plan referred to in condition 1):

